

THE GEORGE WASHINGTON UNIVERSITY

Washington, D. C.

Minutes - The Faculty Senate

Regular Meeting, Friday, November 13, 1970

Faculty Conference Room, sixth floor of the Library

Minute 1 Dr. Bright, Provost and Vice President for Academic Affairs, presided in the absence of Dr. Elliott. The meeting was called to order at 2:10 p.m. Dr. Bright then welcomed Professor Charles B. Nutting to his first meeting with the Faculty Senate.

Minute 2 The minutes of the regular meeting of October 9, 1970, were approved unanimously as distributed.

Minute 3 Professor Shane explained the procedures recommended in the final report of the Subcommittee of the Executive Committee for Review of Senate Committees. He pointed out that to achieve the aims of the Subcommittee it would be necessary to modify the Faculty Organization Plan. Professor Shane moved the adoption of A Resolution Concerning the Date of Election of Members of the Faculty Senate and Their Terms of Office (70/4). Professor Morgan seconded.

Professor Robinson moved, Professor LeBlanc seconded, that Professor Shane's motion be deferred until Item 5 on the agenda had been considered. After discussion by Professors Robinson, Stevens, Wood and Perros, Vice President Bright put the question and Professor Robinson's motion was defeated.

The item of business before the Faculty Senate again became Professor Shane's motion. After discussion by Professors Perros, Shane and Griffith, Vice President Bright put the question and Professor Shane's motion carried.

Minute 6 Vice President Bright suggested that the body dispose of Item 6 on the agenda before turning to Item 4.

Professor Stevens nominated Professor Charles B. Nutting as the Executive Committee's choice for Chairman of the Professional Ethics and Academic Freedom Committee. There were no other nominations. Vice President Bright ruled Professor Nutting elected by acclamation.

Professor Shane nominated Professor Marvin Eisenberg of the SEAS to the Committee on Admissions and Advanced Standing. There were no other nominations. Vice President Bright declared Professor Eisenberg elected by acclamation.

Minute 4 Vice President Bright recognized Professor Robert E. Park, Chairman of the Ad Hoc Committee on the Judicial System for the purpose of presenting portions of the Committee's final report. His remarks follow:

The committee was appointed by President Elliott about a year and a half ago to study the broad processes of disciplining students. It was to go beyond the types of problems that arise from demonstrations or classroom disturbances and was supposed to address the possibility of student participation in academic disciplining, in dormitory councils, and in the lower level specialty courts, such as the student Traffic Court. It was to take into consideration the then pending Joint Statement proposed by the AAUP and the National Student Association and other professional organizations attempting to identify and protect student rights. All this was to come together and be synthesized into an integrated plan

for student discipline. We were to consider the possibility of all student trial bodies, administrative trial bodies, and mixed trial bodies, very much as you have in the three resolutions which the Executive Committee has put before you.

Our committee met extensively that first spring. We issued special reports and letters advising the President and Vice President Smith of our view on aspects of the existing student disciplinary proceedings. We participated in the preparation of advice on the Joint Statement and submitted special reports to the Senate on that Statement. So we have in the course of the committee's life submitted several interim reports which you have already had or which have gone directly to the President of the University.

We now come to the point where we are prepared to submit our final recommendations and the comments on those recommendations. You have before you Part I of the final report, the set of recommendations in six chapters. These recommendations will come before the Senate in resolution form after the President has decided what action he wants to take on them. Following this there are two additional parts. One will discuss in detail many sections of the recommendations to try to make them more intelligible. It is unfortunate that you have to have comments on comments, but many people felt that in trying to write rules we had to be sufficiently precise and succinct to make it workable for the people who will administer the system, and that same conciseness and succinctness would work to the disadvantage of people trying to evaluate the system for the first time. Much of the confusion that arises about student disciplinary procedures, and this has been found in all of the universities that have discussed them, is the adoption of a proper model for student discipline. The appropriate model, for example, for a Student Traffic Court, may not be appropriate for academic discipline. It may not be an appropriate model for controlling intra-group living conditions in a dormitory. So we have tried to outline in this second part in our comments all the various models (there are seven of them) that have been used by schools traditionally or that have been proposed by various universities in the last two or three years trying to deal with student disciplinary problems under a new relationship between faculty and students.

The third part of the report will be devoted to a kind of evaluative comment on attitudes that seem to be putting particular pressure on the universities, attitudes held by students and held by faculty members--changed attitudes--over the last 10 or 15 years in terms of student rights and university obligations, or student obligations and university rights.

Now the last part I am in the process of writing now so I can't be more detailed about it. The second part that I discussed with you is already largely prepared, and the committee has in fact already discussed about two-fifths of it. We will

finish this discussion on next Monday, hopefully. Those who have been close to the committee have heard me say that the final report will be out in a week, or out in two weeks, or out in three weeks 30 or 40 times over the last year and a half, and I am very sorry for that. The committee is for me and the other members of the committee necessarily a collateral duty. It is not our prime business in the University. It is also a problem that has to be formed and reformed in your mind as you have new experience or as the courts develop.

So that's the basic status of the report. As to the recommendations, I would like to say this. The committee, as you would note from the introductory title sheet that I attached to the part of the report you received, does not feel sufficiently informed that it can act finally or recommend finally a system of student disciplinary procedures that would work in all circumstances. Part of our problem has been that the Student Court is itself still learning how to operate, and there may be a tendency to be impatient about this, a tendency to feel that there has been a year and a half, they have had experience, and they have had an opportunity to learn. I would suggest to the Senate that the criminal courts in this country have had hundreds of years to learn their procedures, and yet they are constantly exposed to flaws in their procedures.

To illustrate, the Wolfson case, a notorious case in terms of the interests of the Government, in which a prominent industrialist was given an extremely careful prosecution and went to jail, must be tried again because a Federal judge found a critical defect in the procedure of the case. This happens all the time. About twice a week in the Washington Daily Law Reporter you will see cases, criminal cases, overturned because of some imperfection on the part of the prosecutor. Now if professionals, mature professionals, in the most critical kinds of prosecution, make these errors, it is not surprising that a University with a relatively informal set of procedures should make mistakes as it develops its processes. The question is whether we can afford those errors, not whether they will be made. They will be made. It doesn't matter what kind of procedures the Senate adopts or the Board of Trustees adopts there will be errors and some of these errors will be fatal. The question is how to minimize the errors and how to devise a system that is practicable.

We think that, with the strengthening of the presentation of the University's case and the recommendations as to a University representative, the vast bulk of significant errors or problems in the adjudications will be avoided. We asked the President to recommend to the Senate that you extend the Student Court with these various changes, which we think will substantially strengthen the Court, for a year. When I said I didn't feel the committee could act finally on this, this is what I meant: that the universities are in a period of turmoil and change and the Student Court has, during this period, learned its business slowly, but we think it is learning its business well, and, if the procedures are adapted and changed as we recommend, that it will effectively and practically serve the University as a satisfactory judiciary for a year, and then can be reviewed again. We don't want this thing endlessly before you or before the Board of Trustees, but we do not think anyone can act competently and finally at this stage.

There is one last comment I should make about the proposals. In the summary statement that was attached to the agenda in which I outlined the significant changes which the committee has recommended, you will notice a provision for a student/faculty committee on academic discipline. This is not an attempt to remove from the faculty a traditional responsibility for academic discipline. It is to afford the faculty, when it chooses to use it, a joint student/faculty body on academic disciplinary matters that can act for the University as a whole. The students would like very much to have this. The committee felt that such a system would work effectively. You will notice the ratio of students to faculty is only one student to three faculty members, and we think this would be a fair way to represent the University's interests and also to permit effective student participation.

Dr. Bright, that's the status of the report.

Minute 5 Vice President Bright recognized Professor Morgan who moved the adoption of the resolution listed as Alternative 1, Professor Stevens seconding:

A RESOLUTION TO MODIFY THE UNIVERSITY JUDICIAL SYSTEM DEALING WITH STUDENTS CHARGED WITH NON-ACADEMIC DISCIPLINARY OFFENSES (70/5)

Whereas, The Student Court is scheduled to expire at the end of the Fall Semester 1970-71; and

Whereas, The Faculty Senate believes it should be continued for an additional year, possibly in modified form suggested by the Ad Hoc Committee on the Judiciary; therefore

BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON UNIVERSITY:

1. The Student Court should be continued, in principle, until the end of the Fall Semester 1971-72.

2. The question of conditions of continuance is deferred for consideration at the December 11, 1970, meeting of the Faculty Senate.

Professor Nutting raised a point of inquiry as to what was before the Senate. Professor Nutting pointed out that the Park committee report was to the President and wondered what the Senate had before it for decision. Vice President Bright ruled that the Senate could act on anything it wanted to; whether the President approved the action was another matter.

After discussion of the point of order by Professors Morgan, Nutting, Cloutier, Vice President Bright, and Professor Allen, Professor Park said that, as he understood it, the intent of the resolution described as Alternative 1 was to continue the life of the Student Court for one academic year beyond the time it would otherwise expire, and to permit changes to that Student Court and any other academic disciplinary system as

the Senate might then choose. It was not an adoption in spirit or in specifics of any of the recommendations the committee had made. The resolution would make it possible for the Senate later to consider the recommendations.

After clarification of the point of inquiry, Vice President Bright ruled that the matter before the Senate was Resolution 70/5.

Professor Robinson elucidated concerning his commentary on Alternatives 2 and 3 sent with the agenda, and also discussed the Morgan motion (Alternative 1). Professor Kirsch asked if the discussion was germane, or represented the substance of a report which had no place before the Senate at the time. Vice President Bright ruled that because three alternatives had been placed on the agenda, although Professor Morgan had moved only the adoption of Alternative 1, it would be difficult to separate germane and ungermane comments on all three alternatives. He therefore ruled Professor Robinson's discussion germane. Professor Robinson continued his discussion on the subject.

At what Vice President Bright took to be the conclusion of Professor Robinson's remarks, recognition was extended to Professor Morgan. Following this Professor Robinson moved the adoption of Alternative 2. Professor Highfill seconded. The Chair ruled the motion out of order because the floor had been given to Professor Morgan.

After discussion of Resolution 70/5 by Professors Morgan, Kirsch, Griffith, and Stevens, Professor Cloutier asked the floor for Professor Lowell Smith of SGBA. Professor Smith reported as follows:

I would like to describe for my faculty colleagues who haven't had the opportunity to experience bringing a case before the Student Court. I'll attempt to be brief.

The one case brought before the Student Court in which I was a participant involved the disruptions during the student strike of last May. It was precipitated by an invasion of the Hall of Government by a flock of some 250 to 300 students who went around hammering on the classroom doors, chanting in the outer lobby, and blocking access to the building, and in fact filling the lobby and the stairway to the second floor with students. Two of the individuals were identified as leaders who were precipitating portions of this action, and I brought charges after a process of identification. They were warned, adhering very carefully to provisions previously submitted by the Provost and Vice President for Academic Affairs, about the possibility of disciplinary action in the event the disruptions were allowed to continue. This is what precipitated the Student Court hearing.

The hearing itself was a colorful one. Early in the procedures the audience arrived. The audience for the most part consisted of what I understand to be the traditional court audience for the kinds of students who are historically involved in the kinds of disputes considered by the Court. Among these were a dog, a young lady attired in a pair of slacks with a rectangle cut out of the area covering the pubic portion, a group of students bearing soft drinks, and several of them proceeded to seat themselves on the floor in front of the audience and for a period of time of roughly three hours proceeded to laugh and deride the operations of the Court, to grind their cigarette butts out in the carpet, and generally act in a manner prejudicial to good order.

The Student Court itself opened its proceedings by indicating that the rules of evidence commonly followed in a court of law would not be applicable to the hearing, but rather that the rules of evidence concerning common sense would prevail (as in a portion of the Students Rights and Responsibilities handout). They then proceeded to cut apart the charge filed by a faculty member with no pretense to any legal expertise on the basis that the charge itself perhaps was poorly constructed, a point I am perfectly willing to acknowledge. An hour's worth of testimony by one professor and two hours of additional testimony by myself led to a 10-minute recess at the end of this presentation of the University's case. At the 10-minute recess the faculty advisor--a professor who teaches rules of evidence--was asked to present his views. It is my impression that he rather succinctly stated the issues as he saw them, the evidence that had been presented, and then allowed the court to follow where he had led them. The prosecutor for the University's case, while a zealous young man, was undergoing a useful learning experience as Professor Park has described it. Unfortunately the University's case was being tried not on common sense rules of evidence, but the rules of evidence that do apply in the courts with which the Student Court apparently has a substantial amount of experience but the prosecutor and the person bringing the charge has little or no knowledge.

The conclusion of the Student Court was that no evidence had been presented that a disruption had occurred. 250 to 300 students chanting and screaming in the lobby of the Hall of Government was regarded as not having been substantiated. They were generous in that they felt that probably a disruption had occurred, but that there hadn't been any evidence to that extent.

Apparently this means that when a faculty member states that he had observed something it becomes an allegation to be refuted by any other means possible. His word carries the onus of being associated with the establishment. Having failed to show a disruption had occurred it was a logical step that the individuals against whom charges had been brought had not been shown to have participated in the disruption that had not been shown to have occurred. Therefore the case was dismissed.

The kind of circular logic that is precipitated by this kind of occasion may be well known in the legal circle, certainly it may be a product of the immaturity of the Court; I would suggest, however, that at least in this limited sample the Student Court effectively said, "We are not going to respond to a cry for discipline in a most flagrant violation." This is my personal observation. It may not, in fact, be--I am sure the Student Court would not agree with this conclusion.

I consider this the result of four or five factors. The first is the assumption that judgment by one's peers should be interpreted to mean students should only be judged by students. The second is the abrogation by the University administration of any role in original jurisdiction in a case such as this. The third might be the role of the faculty advisor who is in a student/faculty relationship to the individuals on the Court. A fourth might be reliance upon strict rules of evidence during the proceedings of the Court itself, which automatically makes the individual bringing the charges susceptible to all sorts of harassment.

The summary is that I don't think extensive amounts of experience of the Student Court are going to change the transitory nature of the student involvement in the Court itself, whereby you have one group replacing another group over a four-year life span and probably a much shorter time period than that as individuals gain stature sufficient to get appointed or elected to the Court. I also feel that the University effectively denies that it has an important role in the disciplinary process, and I would encourage the faculty to either take no action, or vote for the second or third alternative, but not to continue with the alternative presently under consideration. Thank you.

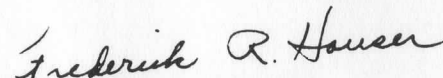
Further discussion followed by Professors Perros, Allen, LeBlanc and Park.

Professor Cloutier moved to table the motion and Professor Highfill seconded. Vice President Bright put the question and after a request for a division by Professor Stevens, Vice President Bright ruled the motion had carried 17 to 8.

Professor Morgan moved postponement to the next meeting of any consideration of matters relating to the judicial system. Professor Stevens seconded. The motion carried.

Minute 7 There were no brief statements!!!

Minute 8 Vice President Bright declared the meeting adjourned at 3:37 p.m.


Frederick R. Houser
Secretary

THE GEORGE WASHINGTON UNIVERSITY
Washington, D. C.

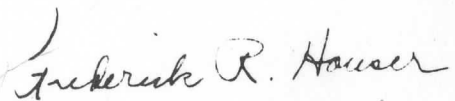
The Faculty Senate

November 6, 1970

The Faculty Senate will meet on Friday, November 13, 1970, at 2:10 p.m., in the Faculty Conference Room on the sixth floor of the Library.

Agenda

- 1) Call to order
- 2) Minutes of the Regular Meeting of October 9, 1970
- 3) Final Report of the Subcommittee (of the Executive Committee) for Review of Senate Committees, and resulting resolution to change the Faculty Organization Plan: A RESOLUTION CONCERNING THE DATE OF ELECTION OF MEMBERS OF THE FACULTY SENATE AND THEIR TERMS OF OFFICE (70/4) (attached)
- 4) Special Business
Final Report by Professor Robert E. Park, Chairman, Ad Hoc Committee on the Judicial System (section on recommendations from the final report extracted and attached). The full report of the Ad Hoc Committee will be too lengthy for distribution to the faculty as a whole, and therefore it will be distributed to the members of the Senate and copies placed on reserve at the University Library.
- 5) Introduction of Resolutions
A RESOLUTION TO MODIFY THE UNIVERSITY JUDICIAL SYSTEM DEALING WITH STUDENTS CHARGED WITH NON-ACADEMIC DISCIPLINARY OFFENSES (70/5) (attached)
69/2 created a Student Court for a trial period of one year. 69/20 extended the Student Court for an additional period of six months ending with the Fall Semester 1970-71 to permit completion of a report by the Ad Hoc Committee on the Judicial System. The following alternatives are submitted for decision: Alternative 1, to extend the Student Court until the end of the Fall Semester 1971-72, possibly in modified form suggested by the Ad Hoc Committee on the Judicial System; Alternative 2, to replace the Student Court with a compromise between an all-student tribunal and an administrator, namely, a joint body composed of students, faculty and an administrator, with appeal to the President rather than to the Hearing Committee on Student Affairs; Alternative 3, to move to a completely administrative process similar to that of the past.
- 6) General Business
 - a. Nomination of Charles B. Nutting, Professor of Law, as Chairman of the Faculty Senate Committee on Professional Ethics and Academic Freedom
 - b. Nomination of a member to the Admissions and Advanced Standing Committee
- 7) Brief Statements
- 8) Adjournment


Frederick R. Houser
Secretary

A RESOLUTION CONCERNING THE DATE OF
ELECTION OF MEMBERS OF THE FACULTY
SENATE AND THEIR TERMS OF OFFICE (70/4)

Whereas, the University can best be served by a Faculty Senate whose Executive Committee is selected by all the members of the Senate with whom the Committee will serve, and

Whereas, the present procedure has lame duck characteristics not consistent with the best principles of democratic governance, therefore

BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON UNIVERSITY THAT IT RECOMMENDS:

1. The following sections of the Faculty Organization Plan be amended by the Faculty Assembly to read as follows:

2. III. The Faculty Senate

Section 2. Organization

(c) Terms of Office

The term of office for faculty members of the Senate shall be two years beginning with the first regular Senate meeting in March of... (balance unchanged).

III. The Faculty Senate

Section 3. Election of Faculty Members

(4) The elections shall be held at meetings called by the deans of the respective schools prior to February 15 of ... (balance unchanged).

Subcommittee on Faculty Senate Committees

October 23, 1970

MEMORANDUM

October 23, 1970

To: Edwin L. Stevens (Aud. 1)
Chairman, Executive Committee, Faculty Senate

From: Subcommittee on Faculty Senate Committees
Norman C. Kramer
John A. Morgan, Jr.
John P. Reesing, Jr.
Presson S. Shane
David J. Sharpe

Subject: Review of Faculty Senate Committees

The subcommittee listed above submits this report about Faculty Senate Committees in the belief that we have completed our mission. In the event that additional consideration seems appropriate, the subcommittee stands ready to respond to your questions and suggestions. The material that follows is presented in two parts, according to the two principal objectives that were assigned to the subcommittee. Under each objective you will find, first, some of the main considerations, and, second, the recommended enabling legislation that seems required to achieve the objective.

Objective 1

Streamline the committee structure of the Faculty Senate by reducing the number of standing committees.

The present standing committees were reduced to five by grouping the present committees to achieve some parallelism with the five standing committees of the Board of Trustees.* It seems important to describe these committees as to purview in the Senate Bylaws in order to retain some hard-won "rights" as to legitimate spheres of interest. It seems essential to retain the "Professional Ethics" Committee unsullied in its extant dual role.

After extensive consideration, the idea of creating an Executive Committee to be composed of the Standing Committee Chairmen was finally rejected because the gain in efficient communication which such would bring was believed to be outweighed by the difficulty of finding qualified faculty members with sufficient time to do justice to the two posts simultaneously.

Student membership on standing committees, especially the Student Affairs Committee, was eventually given up by all but Professor Morgan who feels that student membership is needed on the Student Affairs Committee. Considerations of importance were:

* Academic Affairs, Financial Affairs, Student Affairs, University Development, and University Trusteeship.

October 23, 1970

- (1) There is presently a Joint Faculty-Student Committee. (Special Senate action may be required to maintain this Committee if the proposals made here are adopted.)
- (2) There is, at present, no student governing body which regularly could be asked to provide representative student leadership for Faculty Senate committees. (Publicity of this might exacerbate relations and give rise to the position that student membership will be "automatic" with a new student government.)
- (3) The Commission which is presently studying "University governance" seems likely to provide additional mechanism for student-faculty interaction in a governing sense.
- (4) There is some belief that a Faculty Senate should authorize committees within which voting is charged only to faculty. Our proposal would still leave it possible (as at present) for any Senate Committee to seek assistance from students by requesting student comments and/or by inviting students to certain meetings of the committee.

The number of members on each committee was not specified because freedom as to number permits the Senate to establish this as seems appropriate at the time of electing the members to each committee each year.

A change in Faculty Senate Bylaws is required to achieve Objective 1:

A Resolution Concerning Committees of the Faculty Senate

Whereas, the University can best be served by an efficient committee structure within the Faculty Senate, and

Whereas, the present structure has become unwieldy and has some overlapping jurisdictions, therefore

BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON UNIVERSITY THAT:

1. Section 11 of the Bylaws of the Senate is amended to read as follows:
2. Section 11. Standing and Special Committees

In addition to any other committees that the Senate may establish on its own initiative, or by direction of the Assembly, or by request of the President, there shall be standing committees for the following areas:

- (1) Academic Affairs -- relating to educational policy, research, and university objectives.
- (2) Faculty -- relating to appointments, remuneration, promotion, performance, and development.

October 23, 1970

- (3) Professional Ethics and Academic Freedom
- (4) Student Affairs -- relating to admissions and advanced standing, scholarship, and student relationships.
- (5) University Operations -- relating to administration, athletics, finances, library, physical facilities, public ceremonies, university development, and the university's relations with the community.

Membership in the standing committees shall consist of voting members who shall be Faculty in full-time service, and nonvoting members who shall be officers of administration whose duties fall within the committee's scope and who have been appointed to the committee by the President.

Objective 2

Change the procedure for electing the Executive Committee of the Senate so that the newly-elected Senators may participate in electing the Executive Committee for the first session (A Senate business year) in which they sit.

The present procedure of electing the Executive Committee in April so that the regular May Senate meeting may elect standing committees before the summer recess means that members of the Faculty Senate who take office in May are unable to vote for the Executive Committee with which they will serve. One course of action which was considered was that of maintaining an out-going Senate and its committees with no nominations until the new Senate meets. The new Senate's first business would then be the election of an Executive Committee. This had appeal as a "democratic process" but weakness from the standpoint of being nondeliberative and discontinuous with the outgoing Senate. Various points of view, including ones that became familiarly known as the caucus problem and the interregnum problem, were presented. The procedure which we ultimately selected for recommendation is as follows:

- (1) The outgoing Executive Committee nominates a committee to nominate both the members and the Chairman of the succeeding Executive Committee, as now provided in the Faculty Organization Plan.

- (2) The new members of the Faculty Senate are elected by February 15 each year (rather than by April 15 as now).

- (3) The incoming members of the Faculty Senate begin their terms with the first meeting in March (rather than May) each year. (April was considered and rejected because it was believed that the timing of Spring Recess might on occasion cause some difficulty in the process of selecting nominees for the standing committees.)

passed 11/13/70

October 23, 1970

(4) The Executive Committee will be elected at the first regular Senate meeting in March each year. The group of nominees will consist of those presented by the nominating committee elected by the outgoing Senate, augmented as may be desired under the present procedures in the Faculty Organization Plan, which provides that "individual faculty members of the Senate shall have the right to make additional nominations, by petition to the Executive Committee or nominating committee prior to the election meeting, or from the floor at such meeting." Thus, a slate is generated through the out-going Senate, may be modified by the incoming Senate, and is voted on by the incoming Senate.

(5) Since the Executive Committee will be elected in March, it should be able to submit nominees for standing committees to the April meeting of the Senate. Thus the new Senate will be fully organized after the April meeting and well before the summer recess.

The principal shortcoming of the proposed procedure is believed to be the fact that a faculty member's tenure status is not known, on initial achievement, until after April 1 of each year by the present appointment schedule. Thus, with the election of members to the Faculty Senate being set "by FEBRUARY 15" (rather than by April 15) some potential candidates to the Senate must wait about a year after achieving tenure status before an election opportunity arises. This shortcoming is viewed by the subcommittee as insufficient to outweigh the advantages of the recommended change in timing.

A change both in the Faculty Organization Plan and in the Faculty Senate Bylaws is required to achieve Objective 2:

Amendment of Faculty Organization Plan

A Resolution Concerning the Date of Election
of Members of the Faculty Senate and their
Terms of Office (70/4)

Whereas, the University can best be served by a Faculty Senate whose Executive Committee is selected by all the members of the Senate with whom the Committee will serve, and

Whereas, the present procedure has lame duck characteristics not consistent with the best principles of democratic governance, therefore

BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON UNIVERSITY THAT IT RECOMMENDS:

1. The following sections of the Faculty Organization Plan be amended by the Faculty Assembly to read as follows:

October 23, 1970

2. III. The Faculty Senate

Section 2. Organization

(c) Terms of Office

The term of office for faculty members of the Senate shall be two years beginning with the first regular Senate meeting in March of . . . (balance unchanged).

III. The Faculty Senate

Section 3. Election of Faculty Members

(4) The elections shall be held at meetings called by the deans of the respective schools prior to February 15 of (balance unchanged).

Amendment of Senate Bylaws

A Resolution Concerning the Business Year
of the Senate

Whereas, the Faculty Organization Plan has been amended to elect members of the Faculty Senate in such time each year that they may participate in selecting the Executive Committee with which they will serve, and

Whereas, the present business year of the Senate does not now make use of the advantage provided by the foregoing amendment, therefore

BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON UNIVERSITY THAT:

1. Section 1. (c) of the Bylaws of the Senate is amended to read as follows:

2. Section 1. Meetings and Sessions

(c) The business year of the Senate shall be called a "session" and each session shall commence with the call to order of the regular meeting in March.

PSS:ehr

November 5, 1970

From: Robert Park, Chairman

Ad Hoc Committee on the Judicial System

To : Members,

Faculty Senate of The George Washington University

Subj: Final Report

1. As the Faculty Senate knows, this Committee is a Presidential Committee, reporting directly to the President of the University. In order to permit a fuller debate on the student disciplinary system, the Executive Committee asked that those sections of our final report available at the time of the mailing of the agenda be provided. The President consented to this distribution. It should be noted, however, that the report and recommendations are to him, they are not his. Whatever action he chooses to take on the report will presumably be taken after he receives the report on November 10, 1970.
2. This letter is to accompany those finished sections, to further advise the Senate as to what additional material of the report will be sent them prior to the Senate meeting, and to summarize very briefly the major provisions of the recommendations.
3. In addition to the recommendations accompanying this letter, you will receive any additional recommendations that were not in finished form by the time the agenda was prepared plus a detailed discussion of the recommendations and alternative systems (Part II) plus a discussion of the values impinging upon the design of a contemporary system of student discipline (Part III). In these parts of the report the Committee hopes to advise the President and others of the thinking nationwide that is producing such ferment in student administration, and of the important values and assumptions of universities as communities of learning and research that may be affected.
4. The following represents a brief summary of the major changes in the present judicial system recommended by the Committee:
 - a. Provision of a university representative with litigation experience to present major disciplinary cases to the courts and panels, to draft model opinions for the guidance of the courts and panels, to make decisions as to what kind of relief or sanction the university should seek, and to supervise the presentation of disciplinary cases which he does not personally present.
 - b. The vesting of expulsion power exclusively in the Student-Faculty Committee on Appeals, the Vice President for Student Affairs, the Presidential Appeals Board and the Board of Trustees. Cases in which the university seeks expulsion of a student will be brought in one of these forums.

November 2, 1970

- c. Provision of a special review panel at the presidential level, and of emergency trial panels to avoid unreasonable backlogs of cases.
- d. Provision of a right of review only in cases involving penalties of the kind protected by the Statement on Student Rights and Responsibilities, all others being subjected to discretionary review.
- e. Provision of a schedule of penalties and limitations upon the jurisdiction of certain courts for certain kinds of offenses.
- f. Provision for interim appeals on questions of law or interpretation of university regulations when such appeal is likely to expedite the proceeding.
- g. Provision for a removal power by superior courts when a fair trial seems impossible at a lower level.
- h. Provision of a new academic disciplinary committee to handle academic dishonesty cases delegated to it by individual colleges and schools. The delegations are at the option of the school or college.
- i. Provision of administrative, non-judicial punishment for some cases not involving significant penalties as defined by the Statement on Student Rights and Responsibilities.

5. Finally, the Senate is reminded that three of its members served on this Committee, Professors Kirsch, Morgan and Wood, and will be available to answer questions or explain provisions. Further, I shall be pleased to answer any questions and offer any comment that the Senate desires and will make myself available at the Senate meetings for this purpose.

Very respectfully yours,

RE Park

Robert Park, Chairman
Ad Hoc Committee on the
Judicial System

November 10, 1970

The Final Report of the Ad Hoc Committee on the Judicial System:

A MODEL CODE FOR STUDENT DISCIPLINARY PROCEDURES

Part I - RECOMMENDATIONS

- Chapter 1 - Policies, Principles, Rights
- Chapter 2 - Organizations, Sanctions
- Chapter 3 - Functions, Duties, Responsibilities
- Chapter 4 - Regulations, Codes, Ordinances
- Chapter 5 - Special Procedures, Emergencies and
Non-Prejudicial Errors in Procedure
- Chapter 6 - Reform, Changes, Amendments

Part II - ESSENTIAL ASPECTS OF A UNIVERSITY JUDICIAL
SYSTEM

Part III - STUDENT DISCIPLINE AND CONTEMPORARY VALUES

Part IV - APPENDICES AND ATTACHMENTS

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INTRODUCTION

A national atmosphere of social tension, political conflict, civil unrest and changing mores has created new pressures for our universities and their people. Deep mistrust among students of the good will and judgment of civil authorities has spilled over heavily in universities to create suspicions and fears of administrative power. A national expansion in the use of the courts to curtail governmental power has created new attitudes of litigiousness and legalism that require a heightened scrupulousness in attention to procedures and forms of official conduct. New patterns of behavior and thought among the young, such as drugs and new sensitivities to individual freedom of conduct, challenge old assumptions of university administrators toward students. New techniques of protest and a new vocabulary of political rhetoric have threatened conventions regulating respect for property and persons, social manners and the numerous status relationships among students, faculty and administrators. Attempts to democratize decisions formerly delegated to those in special authority and attacks upon expertise as a covert and oppressive elitism have left large segments of the universities and the society confused as to where power should lie. A confusion and blurring of distinctions between public and private institutions have produced novel applications of federal constitutional rights. A new and rampant moralism of the left and of the right has produced an autistic righteousness that raises tensions and prevents communication. All of this is aggravated by a rhetoric of demands and unrealistic expectations, and by a rhetoric of fear and unrealistic defensiveness in response. The university and colleges, as the largest, best organized, most gifted and articulate national community of young adults, have become the focal point of much of these tensions and anxieties.

In this context, the Ad Hoc Committee on the Judicial System has considered a wide variety of student disciplinary procedures and commentaries and has produced a detailed set of recommendations of procedures for The George Washington University. This is offered in Part I of the report. It has attempted to recapitulate the major arguments that it weighed and the reasoning that it found persuasive in Parts II and III of the report. As this introduction would suggest, many of the pressures on a contemporary student disciplinary system are from outside the university. The committee has tried to determine which of these are legitimate influences on university organization, and to resolve fairly the various conflicting demands upon those responsible for student discipline. The committee would emphasize that we are still in the midst of change, and that the better wisdom of the time would be to act positively but to keep the mechanism of discipline under regular review. No amount of bullet biting or firm resolve will provide the detailed foresight that would be required were we to attempt to settle these problems once and for all.

Finally, as chairman, I would like to express my appreciation for the creative and constructive support of those who are listed on the cover of the report. These people, especially the committee members, gave selflessly and extravagantly of their time and experience. They have earned the deepest gratitude of the chairman, and, I think, of the university.

November 10, 1970

Robert Park, Chairman

THE AD HOC COMMITTEE ON THE UNIVERSITY JUDICIAL SYSTEM

THE GEORGE WASHINGTON UNIVERSITY

PART I - RECOMMENDATIONS

Chapter 1. Policies, Principles, Rights.

101. Authority for Student Discipline. Ultimate authority for student discipline is vested in the Board of Trustees by the University Charter. Authority to discipline and control student conduct prior to action by the Board of Trustees is vested in the faculty of the University. The powers of the Board of Trustees and of the faculty may be delegated to such individuals, committees or organizations as the Board or faculty may respectively choose.
102. Student Regulations, Codes of Conduct, Policies. The general policy of the University is to put all special rules of conduct and requirements of students in writing and to publish such rules and requirements in a manner reasonably calculated to inform affected students. Prior to enrolling in the University students shall be informed explicitly that the University requires students upon enrolling to submit to its disciplinary authority, that the sanctions for violation of such rules and requirements may include permanent expulsion from the University and that such expulsion may make enrollment in another college or university practically impossible, and that the University reserves the right to change such rules and requirements after the enrollment of a student. Students shall also be informed that regulations or requirements applicable only to a particular program, faculty or class of students may not be published generally, but such regulations or requirements shall be published in a manner reasonably calculated to inform affected students.
103. Interpretation and Construction of Rules and Regulations. The general policy of the University to make special rules and requirements explicit does not constitute an undertaking to define breaches of discipline in exclusive terms. The purpose of putting such rules and requirements in writing is to give students general notice of limitations on conduct. Such rules and requirements should be read broadly and not construed narrowly as a criminal statute might be read. Students shall be informed that the prescriptions and proscriptions are to be read broadly. Nevertheless, persons responsible for drafting rules and requirements shall make them as definite and explicit as is reasonably possible lest the freedom and private lives of students be unnecessarily or unreasonably invaded or circumscribed.

104. Implicit Authority, Implicit Notice, Customs and Conventions. The University is not an institution so alien and unfamiliar to students that every kind of offensive conduct or breach of discipline need be anticipated and explicitly forbidden. Such predictive rule making is unnecessary and impossible. Broad conventions of social usage apply within the University community, such as respect for other persons, for those responsible for University functions, and for property. Broad rules, merely reminding students of their obligations in this regard, should be incorporated in the general University regulations. In this sense, general notice should be given students of the authority implicit in faculty, administrators, staff and student employees and officers to exercise such authority as is reasonably required to fulfill their assignments. Similarly, the notice implicit in the customary procedures of a program or facility may be sufficient to give actual notice to students familiar with such programs of limitations upon their conduct.

105. Due Process and Fairness in Student Discipline. The University shall provide disciplinary procedures which protect the individual dignity, integrity and reputations of its students and which are fair in both form and substance. The model for disciplinary procedures that the University adopts is that of the administrative process, not that of the criminal or civil courts. The protection of the student will be based upon procedures that provide a right to notice prior to any decision on a disciplinary charge that may result in expulsion, suspension, permanent reprimand, or other stigmatizing personnel action; a right to know and to rebut the evidence against him; a right to a rational decision based upon evidence which a responsible person would find reliable in serious affairs; a presumption of innocence overcome only when the decision maker is strongly persuaded that the student is guilty; a right to an adviser at interviews, conferences and hearings; a right to have the decision reviewed by higher authority; and a right to have his case processed without prejudicial delay. The University disciplinary system shall not be allowed to become excessively legalistic or adversarial, and technical variations from prescribed procedure will not invalidate a decision or proceeding unless significant prejudice to the student defendant or other party is the result of such variation. To this end, individuals and bodies delegated authority to make disciplinary decisions shall enjoy considerable discretion to interpret, vary and waive procedural requirements to the end that a just and fair decision may be obtained.

106. Disciplinary Action, Counselling and Educational Objectives. The University's interest in student misconduct involves five responsibilities of the University: the responsibility to create and maintain an environment in which inquiry, learning and scholarship may flourish; the responsibility to nurture and promote the health and growth of the individual student, especially of the undergraduate; the responsibility to provide opportunities for the development of intellectual, professional, social and recreational associations and activities within the University community; the responsibility to provide reasonable security

to persons and property entrusted to or associated with the University; and the responsibility to provide a sound, disciplined and systematic program of instruction, examination and certification of achievement so that its functions as an institution of higher education may be fulfilled. These responsibilities may conflict when the needs of the individual student, or his conduct, vary sufficiently from the norm. Similar conflict may spring from the perceived needs or the conduct of groups of students. The University recognizes that there is no formula or set priority that it can adopt in advance, but that special cases may involve special treatment. Nevertheless, in general terms, the University must commit its policies and resources first of all to protect and promote academic freedom and its associated ideas and activities. More than anything else, academic freedom is the peculiar and unique social trust of the universities. Next, as a general rule, the University must prefer those functions and responsibilities that are social or widely shared to those that are individual or narrowly held. Finally, in regard to the individual, when the University must choose between the interests of the deviant, exceptional or disturbed student and the interests of other students, the limited resources of the University may require that the psychological, disciplinary, educational or other demands of such student be left to other agencies or institutions. These distinctions spring from difficulties the University has found in mixing incompatible functions or responsibilities. The University is uncomfortable in the role of a prosecutor of students, and finds such a role disruptive of other duties of counseling and guidance. Nevertheless, the University is a large, complex community of human beings and the disciplinary functions must be fulfilled. The University shall adopt, therefore, such discriminations in assignment of duties as will minimize the conflicts of interests and functions described above.

107. Student Participation in the Disciplinary Process. The University believes that students have an important interest in and valuable insight into student misconduct. The University has adopted a policy of and provided a mechanism for the participation of students in the formulation of general standards of student conduct. The University has experimented with students as decision makers in cases of misconduct tried in various areas of and at various levels of University life. The policy of the University is to utilize students actively in the disciplinary processes. Nevertheless, the University recognizes that interests of individual defendants or of the institution may outweigh the value of student participation, as when the defendant may prefer the privacy of an administrator's hearing or when student participants' resignations, academic demands, disorganization or other factors make a timely processing of a case impossible. While declaring itself in favor of student participation in the disciplinary process and declaring a policy that will make active use of students, the University reserves the freedom to take, in extraordinary circumstances, those steps reasonably necessary to assure the efficient conduct of disciplinary procedures.

108. Civil Authority. The University enjoys no special status in regard to civil or criminal law. The University cannot prohibit the enforcement of law on the campus or against its personnel. It may exercise a very limited control over police action on its own property, but the campus is thoroughly broken up by public streets. In a time of widespread civil disturbances, conduct that might in more peaceful times be left to University discretion or discipline may lead to arrest and prosecution by civil authorities. The University regrets the tension and conflict, and the ambiguity in students' minds as to who has authority over them. For that reason, the University calls this matter to the attention of students, and announces that its policy is against the use of the police of the civil authorities or of the civil courts unless serious risks to the objectives outlined in Section 106 above make such use clearly advisable.

109. Disciplinary Authority Not Exclusively Judicial. The adoption of a scheme of student courts and disciplinary procedures does not relieve faculty or administrators of their primary responsibilities for maintaining student discipline. Minor or specialty courts are included in the system to handle cases of primary interest to students, such as the student traffic court, the residence halls courts, etc. It seems appropriate for appeals from these specialty courts to go to an all student court of broader University composition and perspective. The Student Court as a court of original jurisdiction and the bodies above it are provided for adjudicating serious charges of misconduct that may result in very serious penalties, such as suspension, expulsion or permanent reprimand. Between these two areas lie the vast bulk of student misconduct problems. It would be absurd to provide elaborate procedural protections and costly hearing procedures to determine that a student seen breaking a window owes the University compensation for the window, or to reprimand a student for displaying disrespect in a classroom for his professor, or to warn a student to stop fighting in a dormitory or face possible suspension or expulsion. Faculty and administrators will be expected to continue to enforce University rules and regulations and to do so in a fair, reasonable and expeditious manner, and to exercise the inherent authority of their offices as required.

110. Referral of Cases to the Student Court. In establishing the Student Court it is not the University's intent to judicialize every infraction of rules or regulations. The intent is to provide an all student adjudicatory body that will try cases involving serious breaches of University rules, the violation of which may result in the imposition of penalties such as expulsion, suspension, permanent reprimand or other stigmatizing personnel action. Alternative sanctions for misconduct which may be imposed administratively include informal warnings, informal reprimands, letters of warning or reprimand to the student or to the student and his parents, and administrative probation. Whether an administrator should rely upon his inherent authority or seek the additional sanctions available through the Student Court must be a matter of discretion. The experience and advice of the University Representative, Section 209,

should be sought in doubtful cases, since that officer must ultimately decide whether the case will be brought on behalf of the University. Some questions that reflect what should be the controlling considerations are the following:

- (a) Is this conduct so injurious to the University or to members of the University community that a penalty as serious as suspension or expulsion should be sought?
- (b) Is this conduct so symbolic or representative in character of misconduct to the University or its members that a serious penalty should be sought for its deterrent value?
- (c) Is this student so recalcitrant and unresponsive to warnings and counsel that a serious penalty must be imposed on him to induce conformance to University rules?
- (d) Is this student so seriously deviant or threatening to the University community that his temporary or permanent suspension or expulsion should be sought?

111. Subpoena and Contempt Powers. Courts and hearing bodies of the judicial system may compel attendance and testimony of students found reasonably necessary to the trial of issues and may exercise reasonable control over those before the court, including parties, witnesses, spectators and others present. Obstruction, disruption or recalcitrance may be controlled by the imposition of penalties reasonably proportioned to the offensive conduct, but the imposition of such penalties shall not be the function of the court or hearing body offended. The determination of whether an offense has been committed and what shall be the appropriate penalty shall be the responsibility of the court or hearing body having immediate appellate jurisdiction over the offended body. A separate action will be adjudicated and the University Representative will represent the offended court or hearing body.

112. Who May Appeal. It is the policy of the university to permit all defendants to disciplinary action in which they have been subjected to a significant injury, as contemplated in the Statement of Student Rights and Responsibilities, to appeal as a matter of right. All other parties, and non-parties significantly affected or injured by the outcome, may petition the next higher body, which body will hear the appeal at its discretion.

113. Disqualification of Decision Makers. The university requires members of all courts and hearing bodies to disqualify themselves whenever they feel that they cannot in good faith and with an open mind hear the dispute impartially and without prejudgment of the specific case before the body. If sufficient disqualifications reduce the court or hearing body to below its chartered quorum, the trial or hearing will be heard at the appropriate appellate level. If a member refuses to disqualify himself and a party objects, the remaining members of the court or hearing body will hear arguments and vote secretly as to whether or not the member must withdraw, a simple majority controlling. In the case of the Student-Faculty Committee on Appeals, the Student-Faculty Committee on Academic Discipline and the Special Student-Faculty Hearing Committee(s), vacancies will be replaced by the President of the University by interim appointments. The test for disqualification will include the following considerations:

- (1) A member should not judge a case with a closed mind or irrebuttable presumptions of guilt or innocence of any defendant;
- (2) A member should not judge a case in which his political opinions loom so large that they will control findings of fact and guilt or innocence or significantly distort his reading of law, regulations or university policy.
- (3) A member should not judge a case involving a party so close to him personally, socially or professionally that his perception of evidence and law may be substantially distorted; and
- (4) A member should not judge a case involving questions of law or procedure on which he holds conclusions so fixed and irrebuttable as to amount to a prejudgment of the case.

It is to be understood that in the close community of university life it will be expected that administrators, faculty and students may have general or even quite specific knowledge of the case to be heard. Such knowledge is not disqualifying so long as a fair and open minded approach to questions at trial is possible. It is important that hearing officers with prior knowledge avoid acting on such knowledge without giving the defense an opportunity to rebut it, and that in cases decided on the record that such knowledge be fully developed on the record lest the hearing officer in such cases rely upon extra-record information.

Chapter 2. Organization and Sanctions

NOTE: Chapter 2 is in the process of being completed at the time of this mailing, and will be mailed immediately upon its completion. Please insert it in proper sequence in this report when it is received.

11. Procedures and Controls: Courts and hearing bodies at the judicial system may compel attendance and testimony of students deemed reasonably necessary to the trial of cases and may exercise reasonable control over those before the court, including parties, witnesses, advocates and others present. The hearing, disposition or recommendations may be controlled by the discretion of judicial officers as provided in the applicable code, but the operation of such bodies shall not be the function of the court or hearing body selected. The determination of whether an offense has been committed and what shall be the appropriate penalty shall be the responsibility of the court or hearing body having immediate appellate jurisdiction over the offense only. A separate action will be adjudicated and the University representative will represent the student court or hearing body.

(4) A member should not judge a case involving questions of law or evidence and law may be substantially distorted; and procedure on which he holds conclusions so fixed and irrevocable as to amount to a prejudgment of the case. It is to be understood that in the case community of university life it will be expected that administrators, faculty and students may have general or even quite specific knowledge of the case to be heard. Such knowledge is not disparaging so long as a fair and open minded approach to questions at trial is possible. It is important that hearing officers with prior knowledge avoid acting on such knowledge without giving the defense an opportunity to rebut it, and that in cases decided on the record that such knowledge be fully developed on the record lest the hearing officer in such cases rely upon extra-record information.

Chapter 2. Organization, Sanctions.

201. All-Student Courts of Original Jurisdiction. A system of all-student courts with original jurisdiction over all non-administrative, non-academic disciplinary cases in which a penalty less than expulsion is sought and not otherwise excepted by Sections 202, 202.1, 202.2, 203, 204, 205 or 206 is established.
202. Optional Hearing Procedures. Certain choices of hearing procedures will be made available to the parties in the interests of privacy, fairness and preference for initial hearing officers.
 - 202.1. Student Defendant's Option. Student defendants will be permitted the option of having their cases tried before a university administrative officer instead of a student court. The official notifying the student of the charge against him will inform him of this option. The presiding officer of the student court of proper jurisdiction will also inform him of this option prior to the beginning of the trial or hearing. Once the hearing has begun, the option may be exercised only for good cause, as where a student objecting to the disclosure of certain evidence that may be of significant personal embarrassment to him is overruled by the court and the court is persuaded that the risk of embarrassment is real.
 - 202.2. University Representative's Option. The University Representative may bring cases alleging violations of university regulations in The Student Court or lower courts as he deems appropriate, provided that in any case in which the University Representative seeks a penalty of expulsion the case will be brought for the initial trial before the Student-Faculty Committee on Appeals or the Vice-President for Student Affairs as the student may prefer. If either of these bodies feels that a penalty of expulsion would be excessive on the face of the complaint, it will refer the case to The Student Court.
203. Failure of Student Court to Exercise Timely Jurisdiction. For each student court of original jurisdiction a set of timely actions will be established to determine deadlines for the acceptance of jurisdiction, the issuance of notice, the beginning of the trial, and other appropriate matters. The failure of any student court to act within the schedule of deadlines established will constitute a surrender of jurisdiction over the case.
204. Emergency Procedures when Docket Becomes Overloaded. For each all student court a docket backlog limit will be established. When pending cases exceed that limit, university administrative action may be taken to assure the timely and efficient processing of cases.
 - 204.1. Special Student-Faculty Hearing Committee(s). Whenever the backlog of pending cases exceeds a limit to be set by rule by the Committee on the Judicial System a special committee will be established as provided in Chapter 5 of this Resolution.
205. Private Bodies, Organizational Discipline, Etc. The jurisdiction of each all student court will be defined in its charter. College, university,

student, professional and social organizations will not be deprived of their power to discipline members or otherwise control their own affairs without an explicit and authoritative withdrawal of such power.

206. The Student Court. An all student court with original jurisdiction over all non-academic disciplinary offenses for which significant sanctions may be imposed, explicitly suspension or permanent reprimand, is established and shall be known as The Student Court. The Student Court shall also be vested with appellate jurisdiction over specified lower courts as otherwise provided herein. The Student Court shall have jurisdiction over violations of all university wide regulations when such violations are not explicitly assigned to another court. The Student Court shall be composed of five students and a non-voting Law Advisor.
- 206.1. Appointment to The Student Court. The President of the university will appoint five students, at least two of whom must be from the law school, from a list of nominees provided by the Committee on the Judicial System. The President may refuse all or some of the nominees and request additional names. The appointments will be for a term of one calendar year and one month, during the first month of which term the members will sit as non-voting observers of the new members of the court. The appointments will begin on the first day of March of each year. The Law Advisor will be a faculty member trained as a lawyer and a member of the bar experienced in litigation. He will be appointed for a term of two years, to begin on the first day of November.
- 206.2. Clerical Support for The Student Court. The Vice President for Student Affairs will provide clerical support for The Student Court and other courts as provided herein, for the Committee on the Judicial System, and to perform specific functions as provided in Section 208.
207. Committee on the Judicial System. A permanent committee on the judicial system is established, to be called the Committee on the Judicial System. The committee will be composed of a Chairman; two additional faculty members; one of the student members of the Student-Faculty Committee on Appeals as elected by the majority vote of all members of that committee; the Chairman of The Student Court; and one student member from the campus at large. The Chairman will be appointed by the President of the university from the members of the Faculty Senate. The two additional faculty members will be appointed by the President from a list of four names provided by the Faculty Senate. The term of all members will be for one year, beginning the first day of May.
208. Executive Secretary to the Judicial System. The Vice President for Student Affairs will provide clerical support for the entire judicial system of student courts, the student-faculty appellate committee, the Committee on the Judicial System, and, to the extent necessary, the Vice President for Student Affairs or his agent when the Vice President or his agent is serving as the administrative hearing officer in a case of student discipline.

209. University Representative to the Judicial System. The impartiality of decision makers in the student disciplinary system is very important. To assure such impartiality, the functions of case adjudication and of case presentation should be clearly separated. The university provides for such separation of function by placing the university officer responsible for the investigation of complaints and the prosecution of charges completely outside the division of Student Affairs, since that division frequently provides the adjudicator and always provide systematic clerical support to the student judiciary and the student-faculty appellate committee. This separation also serves to insulate the office of Student Affairs from the conflicts of interest inherent in requiring it to counsel and advise students and, simulatneously, prosecute cases against such students. The officer of the university responsible for investigating complaints and prosecuting charges will be known as the University Representative to the Judicial System. The University Representative may utilize students, faculty, administrators, or non-university personnel as assistants. The University Representative will be appointed for a term of three years by the President of the university, to take office on the first day of May, subject to confirmation by the Faculty Senate. The University Representative will be relieved of academic duties as required by the President of the university. He will perform his duties under the Provost, the Vice President for Administration, or other administrative officer as designated by the President, but not under the Vice President for Student Affairs.
210. Student-Faculty Committee on Appeals. A committee of four students and four faculty members, at least one of which will be a tenured member of the law faculty, will be named the Student-Faculty Committee on Appeals and will have appellate and limited original jurisdiction as follows: original jurisdiction over all cases in which the University Representative seeks expulsion as a penalty; jurisdiction for the trial process whenever a party petitions the court to accept such jurisdiction as provided in Section 218.(3); interim appellate jurisdiction as provided in Section 218.; appellate jurisdiction as otherwise provided in this chapter; and jurisdiction over novel and extraordinary matters not appropriate for trial by The Student Court. The President of the university will appoint the members from lists of five or more faculty nominees provided by the Faculty Senate and of five or more student nominees provided by the student assembly - or in the absence of such a body, by the student members of the Committee on the Judicial System. The President may refuse all or some of the nominees and may request additional names. Appointments to the Committee will be for one year, to begin on the first day of May. The Chairman of the Student-Faculty Committee on Appeals, named by the President of the university, will be a tenured member of the law faculty. An acting chairman will be appointed by the Chairman as required. If there is no Chairman, an Acting Chairman may be appointed by the President of the University, but such officer may not serve for a period longer than that determined by the next regular meeting of the Faculty Senate, at which meeting the Senate must provide the President with a nominee for the Committee vacancy.
211. Student-Faculty Committee on Academic Discipline. A committee of three students and six faculty members will be named the Student-Faculty Committee on Academic Discipline and will have such appellate and original jurisdiction, powers of

investigation and such advisory and recommendatory functions as may be delegated to it by the individual colleges and schools, generally or as to specific cases. The President of the University will appoint the members from lists of eight or more faculty nominees provided by the Faculty Senate and of four or more student nominees provided by the student assembly - or in the absence of such a body, by the student members of the Committee on the Judicial System. The President may refuse all or some of the nominees and may request additional names. Appointments to the Committee will be for one year, to begin on the first day of May. The Chairman of the Student-Faculty Committee on Academic Discipline will be a tenured full professor, named from the faculty members of the Committee by the President of the University.

212. Special Courts. Such special courts of limited jurisdiction as may be required by the university, its divisions and activities, or by student organizations and activities will be established individually by the Faculty Senate by resolution approving charters for such courts. The charters of such courts will include the following: name of the court, jurisdiction of the court, authority in the university for establishing such a court, appointment procedures for members of the court, procedure for adopting judicial procedures, statement of rights of defendants in such court, voting procedures of the court, reporting procedures on cases and appellate procedures from such court. Approval of the Committee on the Judicial System will normally be required before a request for such a court will be approved by the Executive Committee for the agenda of the Faculty Senate.
213. Special Courts - Exempted. With the consent of The Student Court, special courts, organizational courts, specialized hearing bodies and other adjudicators may use The Student Court as an appellate body. Appeal as a matter of right to The Student Court, however, is available only to chartered courts so authorized. The power of The Student Court to make binding determinations of questions submitted to it from non-chartered bodies is vested only by the consent of the parties in dispute. The Student Court does not have the inherent power to review decisions of campus organizations not subordinated to it by the Faculty Senate or the Board of Trustees. All students subjected to such special courts, organizational courts or private hearing bodies may appeal directly to the President of the university to seek his review of procedures and intervention. Such independent review and intervention is not available independently of the appeals procedures in the case of chartered courts and hearing bodies.
214. Presidential Appeals Board. Exercising the power vested in the faculty by the charter of the university, a final appellate body short of the Board of Trustees, composed of four faculty members, chosen by the Faculty Senate, and the President, is established and is named the Presidential Appeals Board. The Board shall have broad discretionary powers to review findings of fact and of law, determine necessary exceptions to policies and regulations, and review sanctions imposed. It may refuse appeals, merely pass them to the Board of Trustees, make recommendations to the Trustees, remand with instructions or hear the case de novo. It shall be the policy of the university, however, that the Board will act upon appeals from appellate decisions, in the absence

of extraordinary and compelling circumstances, only when the record upon which the appeal is based shows a prejudicial and erroneous application of university policy, or clear evidence of bias or prejudice, or that the judgment is clearly erroneous on the evidence of the record as a whole. A broader discretion under ordinary circumstances is permitted in the review of the assessment of sanctions or penalties, but here, too, the policy of the university shall be that the Presidential Appeals Board should not act unless the record reflects bias or prejudicial misinterpretation of university policy. These restraints do not apply to appeals from the original decision maker, whether that is the office of Student Affairs, the Student-Faculty Committee on Appeals, the Student Faculty Committee on Academic Discipline, or other body.

215. The Board of Trustees. The Board of Trustees is always available to students, faculty and other members of the university community for a final appeal. The presumption of the Board, however, will be that the orderly procedures provided for hearing, decision and review are fair, sufficient and reliable. The Trustees will not consider appeals from the judicial system unless an extraordinary case of bias or error is alleged and persuasive grounds for the existence of such bias or error pleaded in a written appeal submitted to the Secretary to the Board of Trustees. No appeal will be heard unless the normal procedures for appeal have been exhausted unless the appeal for intervention or irregular consideration is accompanied by persuasive argument as to why the following of normal procedures will be futile, unconscionably wasteful or irreparably damaging to the appellant. Nevertheless, the Board of Trustees is determined that the judicial system will operate fairly, reliably and efficiently and makes itself and the Committee on the Judicial System available to hear and investigate all reasonable complaints suggesting significant bias, unfairness or irregularities in procedures or operations.
216. Appeals as a Matter of Right. A student who receives a significant penalty as contemplated in the Statement on Student Rights and Responsibilities, i.e., expulsion, suspension or permanent reprimand, may appeal the decision as a matter of right to the next higher authority or hearing body than that which originally imposed the penalty.
217. Appeals at the Discretion of the Appellate Body. A student or any other party, including the university, adversely affected by a final order, judgment or penalty of any court or hearing body acting as the trial court may petition the next higher authority for appellate review, such appeal to be heard at the discretion of the appellate body. Further appeals will be heard at the discretion of the appellate body petitioned. At its discretion, an appellate body may hear an appeal from any party not adversely affected by the final order when the appeal is based upon allegations that established procedures were not followed to his significant prejudice or that actions taken against him, such as bringing the case to trial, were not within the authority of the university.
218. Order of Appeals. Actions taken at any hearing level as described in this section may be appealed to the next hearing level of the same class, subject to the exception provided in Section 218.2 as to questions of law, construction of regulations, and procedures. Three classes of action are established as follows: disciplinary, administrative and academic.

218.1. Disciplinary Actions. The hearing bodies of the disciplinary class will include all-student courts of original jurisdiction, the Student-Faculty Committee on Appeals, the Presidential Appeals Board and the Board of Trustees. The routes of appeals, unless otherwise provided in the charter establishing a hearing body, will be from Special Courts to The Student Court, from that court to the Student-Faculty Committee on Appeals, from that body to the Presidential Appeals Board, and from that body to the Board of Trustees.

218.2. Administrative Actions. The hearing officers of the administrative class will be the Vice President for Student Affairs or some administrator or faculty member or non-university person named by the Vice President for Student Affairs. The selection of the hearing officer will be made with special consideration of the provisions for disqualification of Section 113. The routes of appeal from the administrative hearing officer will be to the Presidential Appeals Board on all questions of guilt or innocence, findings of fact, appropriateness of the sanction, and allegations of bias or prejudice or other questions of suitability or fitness of the hearing officer. Interim appeals and appeals from final orders based upon questions of law, of construction of rules and regulations, and of procedures or student rights may be appealed to the Student-Faculty Committee on Appeals at the discretion of that Committee, as provided in Section 219, or to the Presidential Appeals Board at the discretion of that Board, as provided in Section 219. At its discretion, either the Student-Faculty Committee on Appeals or the Presidential Appeals Board, may, after hearing argument by parties, direct the appeal, whether interim or final, to the other appellate body, the issues to then be acted upon or not within the discretion otherwise provided that body. The purpose of the alternative routes of appeal for matters of law, of construction of regulations, and of procedures and student rights is to promote the uniform and systematic interpretation of such matters, but to permit an alternative route when necessary to protect the student rights of privacy, confidentiality and choice of an administrative decision maker. Questions of law, rules and regulations construction, and of procedure and student rights which cannot be purged of sensitive matters that might significantly invade the privacy of the student defendant or of other students or persons involved in any way will not be heard by the Student-Faculty Committee on Appeals but will be referred to the Presidential Appeals Board upon the objection of any party, witness, person involved in any identifiable way or by the university on behalf of such persons not present. Appeals from the Presidential Appeals Board on administrative actions will be to the Board of Trustees.

218.3. Academic Actions. Appeals from the Student-Faculty Committee on Academic Discipline will be to the Presidential Appeals Board and from that body to the Board of Trustees.

219. Interim Appeals. Any party having an appeal as a matter of right or an appeal at the discretion of the appellate body once a hearing is completed and a final order issued may make an interim (interlocutory) appeal at the discretion of the appellate body. The occasion of an interim appeal must be one of the following: (1) when some preliminary ruling or order may result in irreparable

of extraordinary and compelling circumstances, only when the record upon which the appeal is based shows a prejudicial and erroneous application of university policy, or clear evidence of bias or prejudice, or that the judgment is clearly erroneous on the evidence of the record as a whole. A broader discretion under ordinary circumstances is permitted in the review of the assessment of sanctions or penalties, but here, too, the policy of the university shall be that the Presidential Appeals Board should not act unless the record reflects bias or prejudicial misinterpretation of university policy. These restraints do not apply to appeals from the original decision maker, whether that is the office of Student Affairs, the Student-Faculty Committee on Appeals, the Student Faculty Committee on Academic Discipline, or other body.

215. The Board of Trustees. The Board of Trustees is always available to students, faculty and other members of the university community for a final appeal. The presumption of the Board, however, will be that the orderly procedures provided for hearing, decision and review are fair, sufficient and reliable. The Trustees will not consider appeals from the judicial system unless an extraordinary case of bias or error is alleged and persuasive grounds for the existence of such bias or error pleaded in a written appeal submitted to the Secretary to the Board of Trustees. No appeal will be heard unless the normal procedures for appeal have been exhausted unless the appeal for intervention or irregular consideration is accompanied by persuasive argument as to why the following of normal procedures will be futile, unconscionably wasteful or irreparably damaging to the appellant. Nevertheless, the Board of Trustees is determined that the judicial system will operate fairly, reliably and efficiently and makes itself and the Committee on the Judicial System available to hear and investigate all reasonable complaints suggesting significant bias, unfairness or irregularities in procedures or operations.
216. Appeals as a Matter of Right. A student who receives a significant penalty as contemplated in the Statement on Student Rights and Responsibilities, i.e., expulsion, suspension or permanent reprimand, may appeal the decision as a matter of right to the next higher authority or hearing body than that which originally imposed the penalty.
217. Appeals at the Discretion of the Appellate Body. A student or any other party, including the university, adversely affected by a final order, judgment or penalty of any court or hearing body acting as the trial court may petition the next higher authority for appellate review, such appeal to be heard at the discretion of the appellate body. Further appeals will be heard at the discretion of the appellate body petitioned. At its discretion, an appellate body may hear an appeal from any party not adversely affected by the final order when the appeal is based upon allegations that established procedures were not followed to his significant prejudice or that actions taken against him, such as bringing the case to trial, were not within the authority of the university.
218. Order of Appeals. Actions taken at any hearing level as described in this section may be appealed to the next hearing level of the same class, subject to the exception provided in Section 218.2 as to questions of law, construction of regulations, and procedures. Three classes of action are established as follows: disciplinary, administrative and academic.

218.1. Disciplinary Actions. The hearing bodies of the disciplinary class will include all-student courts of original jurisdiction, the Student-Faculty Committee on Appeals, the Presidential Appeals Board and the Board of Trustees. The routes of appeals, unless otherwise provided in the charter establishing a hearing body, will be from Special Courts to The Student Court, from that court to the Student-Faculty Committee on Appeals, from that body to the Presidential Appeals Board, and from that body to the Board of Trustees.

218.2. Administrative Actions. The hearing officers of the administrative class will be the Vice President for Student Affairs or some administrator or faculty member or non-university person named by the Vice President for Student Affairs. The selection of the hearing officer will be made with special consideration of the provisions for disqualification of Section 113. The routes of appeal from the administrative hearing officer will be to the Presidential Appeals Board on all questions of guilt or innocence, findings of fact, appropriateness of the sanction, and allegations of bias or prejudice or other questions of suitability or fitness of the hearing officer. Interim appeals and appeals from final orders based upon questions of law, of construction of rules and regulations, and of procedures or student rights may be appealed to the Student-Faculty Committee on Appeals at the discretion of that Committee, as provided in Section 219, or to the Presidential Appeals Board at the discretion of that Board, as provided in Section 219. At its discretion, either the Student-Faculty Committee on Appeals or the Presidential Appeals Board, may, after hearing argument by parties, direct the appeal, whether interim or final, to the other appellate body, the issues to then be acted upon or not within the discretion otherwise provided that body. The purpose of the alternative routes of appeal for matters of law, of construction of regulations, and of procedures and student rights is to promote the uniform and systematic interpretation of such matters, but to permit an alternative route when necessary to protect the student rights of privacy, confidentiality and choice of an administrative decision maker. Questions of law, rules and regulations construction, and of procedure and student rights which cannot be purged of sensitive matters that might significantly invade the privacy of the student defendant or of other students or persons involved in any way will not be heard by the Student-Faculty Committee on Appeals but will be referred to the Presidential Appeals Board upon the objection of any party, witness, person involved in any identifiable way or by the university on behalf of such persons not present. Appeals from the Presidential Appeals Board on administrative actions will be to the Board of Trustees.

218.3. Academic Actions. Appeals from the Student-Faculty Committee on Academic Discipline will be to the Presidential Appeals Board and from that body to the Board of Trustees.

219. Interim Appeals. Any party having an appeal as a matter of right or an appeal at the discretion of the appellate body once a hearing is completed and a final order issued may make an interim (interlocutory) appeal at the discretion of the appellate body. The occasion of an interim appeal must be one of the following: (1) when some preliminary ruling or order may result in irreparable

injury of a significant kind to the appealing party if appellate review of the ruling or order is delayed until completion of the hearing and the issuance of a final order; (2) when the court or hearing body itself is uncertain of the proper interpretation of some matter of law or procedure, when the immediate authoritative determination of the matter may substantially expedite determination of the dispute, and when the court or hearing body is prepared to certify the question to the appellate body; (3) when one of the parties believes that bias, prejudice or other extraneous factors are so influential as to make a fair trial impossible or highly unlikely; or (4) when the hearing body or court and/or all parties feel that the matters at trial are so complex, so difficult, or so urgent that the most efficient and fair procedure would be for the lower court or hearing body to surrender jurisdiction for a trial de novo at the appellate level.

220. Appeals from Final Orders. For purposes of appeal a pragmatic test of finality will be applied. An order will be treated as final if it terminates the dispute between the parties before the court or hearing body; if it determines that a particular rule or regulation is valid, void or applicable to specific conduct when such ruling has significant effect upon organizations and activities which are party to the action even though the court may choose to delay fashioning an order disposing of the detailed claims involved; if an order is issued in regard to one or more parties separable from issues remaining before the court and the order appears to be final as to those parties; or if the order in question appears to be final as to some separable issue merely collateral to the issues remaining before the court though the court retains jurisdiction over the party or parties. These examples are illustrative, not exclusive.
221. Scope of Review Upon Appeal. The broad purpose of providing for appellate review is to assure all parties that the original findings of fact and law, the reasoned integration of them in an opinion and the imposition of sanctions or other solution fashioned by the court or hearing body are sound enough to withstand the scrutiny of a dispassionate and impartial reviewing panel. The extent of review is justified by the seriousness of the issues at trial and of the character of the sanction or order imposed.
- 221.1. General Policy on Remands. Cases on appeal will be corrected at the appellate level when justified by considerations of urgency, complexity, fairness to the parties, efficiency of adjudication, savings of time or the requirements of justice, including the extraordinary taking of testimony, admission of new evidence or trial de novo. At their discretion, appellate bodies may remand a case, but shall do so with specific instructions so that deficiencies or misunderstandings may be readily corrected.
- 221.2. Reviewing Findings of Fact, Findings of Law, and the Logic of the Lower Court. When the trial body has an opportunity to determine the credibility of witnesses, reviewing bodies must give weight to the judgment of the lower court beyond the content of the testimony in a cold record. Additional weight must be given the judgment of the lower court when the appeal is not based upon a full record, as in the case of minor cases. The following guidelines are provided for reviewing authorities:

(1) Findings of fact will not be reversed upon review unless clearly erroneous on the basis of the record as a whole. Appellate bodies having authority to try cases de novo, when the record is unsatisfactory, may selectively recall witnesses and take additional testimony.

(2) Inferences from findings of fact may be reversed by the reviewing authority when it is left with the definite and firm conviction that the inference is mistaken.

(3) Findings of law and the reasoning of the lower court or hearing body are fully reviewable and enjoy no presumption of correctness.

221.3. Grounds for Appeal. Parties seeking review of a decision, order or report will submit a written brief specifying the specific issues for which review is sought and the grounds upon which an exception to the finding or ruling of the lower court in each instance is taken.

221.4. Modifications of Lower Court Orders, Rulings and Penalties. The appellate body may, in its discretion, modify the order or ruling of the lower court, including the assessment of penalties.

222. Rules of Procedure. A set of rules governing general procedural matters will be prepared and maintained by the Committee on the Judicial System.

222.1. Special Rules. Individual courts and hearing bodies will prepare and publish special rules governing procedures peculiar to themselves, subject to the approval of the Committee on the Judicial System.

222.2. When Hearing Must Be Recorded. In all proceedings in which a penalty of permanent reprimand, suspension or expulsion is sought the hearing proceedings will be permanently recorded by tape or transcriber.

222.3. When Recording Is Not Made. When sanctions are imposed after a hearing not recorded by tape or transcription, the hearing body or officer will include in his opinion sufficient detail as to the findings of fact, testimony and evidence as to permit the reviewing body to properly evaluate the findings in relation to the evidence.

223. Orders, Sanctions, Reports. The courts and hearing bodies have three general powers, the power to issue orders to persons and organizations, the power to impose sanctions, and the power to make investigations into and reports upon matters within their jurisdiction. Courts and hearing bodies at various levels have different degrees of these powers. All of the courts and hearing bodies are of limited jurisdiction as provided in this Resolution and elsewhere, the grants of jurisdiction including explicit and implicit powers.

223.1. Opinions, Orders, and Reports. Actions taken pursuant to disputes or trials before all courts or hearing bodies established by the Faculty Senate shall be accompanied by an opinion, order or report that shall include the following distinct sections: (1) a statement establishing jurisdiction over the parties and the matter in dispute; (2) findings of fact; (3) findings of law, rules, regulations, ordinances, etc., including rulings to which counsel took

exception; (4) a brief discussion indicating the findings most central to the logic and conclusions of the court; and (5) the order of the court or hearing body. Remands will contain specific instructions as to correcting deficiencies, perfecting the record, or clarifying the reasoning of the court or hearing body.

223.2. Parties Must Submit Trial Briefs and Draft Opinions, Orders and Reports.

To facilitate the business of the Student Court, the University Representative will and other parties appearing before it may submit a memorandum in the nature of a trial brief summarily outlining the major legal arguments and critical issues of fact that the party anticipates developing in the course of the trial. Further, the University Representative will and other parties may also submit a draft opinion, order and report in a manner favorable to his position and in a form as required by Section 223.1. These papers will be presented to the Executive Secretary by some reasonable time set by the hearing body or Committee on the Judicial System so that they may be duplicated for opposing parties, intervenors and the members of the court. Amended papers may be provided the court during or after the trial or hearing but prior to the relevant decision of the court.

223.3. Orders. The courts and hearing bodies have the power to subpoena persons and university disciplinary records; to issue declaratory judgments; to issue orders to persons and organizations in the nature of mandamus, prohibitions, injunctions and certiorari; to consolidate or separate issues and/or parties for trial; and to make such rulings and to issue such orders as are inherently necessary to the effective conduct of trials and hearings. The charter powers of courts and hearing bodies may be enlarged as to judicial functions, powers and procedures by the Committee on the Judicial System, except that the Committee may not enlarge the substantive jurisdiction of courts and hearing bodies beyond that provided in their charters or in this Resolution.

223.4. Sanctions. The following sanctions may be imposed upon students:

- (1) Admonition: An oral statement to a student that he is violating or has violated institution rules.
- (2) Warning: Notice, orally or in writing, that continuation or repetition of conduct found wrongful, within a period of time stated in the warning or in the indefinite future, may be cause for more severe disciplinary action.
- (3) Censure: A written reprimand for violation of specified regulations, including the possibility of more severe disciplinary sanctions in the event of the finding of a violation of any institution regulation within a stated period of time or in the indefinite future.
- (4) Disciplinary probation: Exclusion from participation in privileged or extracurricular institution activities as set forth in the notice for a period of time. For a determinate period students may be placed on probation, violations of which may result in suspension or expulsion or other disciplinary action.
- (5) Restitution: Reimbursement for damage to or misappropriation of property. This may take the form of appropriate service or other compensation.

- (6) Suspension: Exclusion from classes and other privileges or activities as set forth in the notice for a definite period of time not to exceed two years.
- (7) Expulsion: Termination of student status for an indefinite period. The conditions of readmission, if any, shall be stated in the order of expulsion.

223.5. Sanctions as Applied to Organizations and Groups. The following sanctions may be imposed upon organizations and groups:

- (1) Admonition: An oral statement addressed to the officers, members or faculty advisor that the organization is violating or has violated institution rules.
- (2) Warning: Notice, orally or in writing, that continuation or repetition of conduct found wrongful within a period of time stated in the warning or in the indefinite future, may be cause for more severe disciplinary action.
- (3) Censure: A written reprimand for violation of specified regulations, including the possibility of more severe disciplinary sanctions in the event of the finding of a violation of any institution regulation within a stated period of time or in the indefinite future.
- (4) Disciplinary probation: Exclusion from participation in privileged or extracurricular institution activities as set forth in the notice for a period of time.
- (5) Restitution: Reimbursement for damage to or misappropriation of property.
- (6) Suspension: The organization banned from the campus for a fixed period of time, or an activity prohibited on campus for a fixed period of time.
- (7) Expulsion: Termination of recognition of an organization for an indefinite period and a ban on its campus activity. The conditions of readmission, if any, shall be stated in the order of expulsion.
- (8) Administrative Termination: Termination of recognition of an organization, with a ban on its activity on campus. This differs from 223.5(7) in that it is not punitive in character.

223.6. Reports. The courts and hearing bodies may investigate matters arising from cases before them or upon their own initiative when such matters fall within their jurisdiction. They may then issue reports and/or recommendations to appropriate persons and bodies, including the campus at large. However, if the conduct of the investigation or the content of the report or recommendations indicates a fixed conclusion, closed minds or a high probability of prejudgment, any cases arising out of the report or recommendations will not be tried before such court or hearing body but will be tried at the next higher body.

223.7. Non-punitive Administrative Actions. In the course of university administration, faculty and administrators may take actions that have some coloring of punitive action but which, in fact, are not taken with intent to punish the student. Actions of this kind are necessary to the reasonable operation of the university, but care must be exercised that they do not become devices for avoiding the safeguards established to avoid unfair, arbitrary or capricious invasions of student rights. An example is the refusal to reenroll

a student with unpaid indebtedness to the university. Another example would be the refusal to reenroll a student of incapacitating psychological disturbances. Another example would be the requirement that a student pay for damage to university property caused by his negligence. These examples are illustrative, not a comprehensive description of these inherent administrative powers. These actions are not governed by the disciplinary procedures of the Statement on Student Rights or by the Judicial System.

223.8. Non-judicial Punishment. In the course of university administration, faculty and administrators may take actions that are punitive in character but which are not so serious as to justify referral to the judicial system. An example is the power of a member of the faculty to control conduct in his classroom. Another example is the withdrawal of privileges upon an administrative determination of misconduct, such as library privileges or the privilege of using the University Center for individuals or organizations that do not conform to the regulations of the Center. Actions of this kind are necessary to the reasonable operation of the university, but care must be exercised that they do not become devices for avoiding the safeguards established to avoid unfair, arbitrary or capricious invasions of student rights. Actions taken under such inherent power may give rise to complaints or appeals to the judicial system, the President, the Board of Trustees, or some appropriate Faculty Senate Committee, such as the Committee on Professional Ethics and Academic Freedom, when the student feels that the administrative punishment imposed upon him violated the protections afforded him under the Statement of Student Rights or under this Resolution. Whether the administrative punishment was proper or not will often depend not upon the sanction alone but upon a configuration of factors including the nature of the offense, the nature of the sanction, the situation in which the conduct occurred and in which the sanction was imposed. Sanctions that might be invoked without offending this Resolution or the Statement of Student Rights might include some form of each of the following listed under Section 223.4: (1), (2), (3), (4), and (5). Even (6) might be available to a professor in his responsibility for controlling the classroom. The powers of this section are broad and inherent in the offices and responsibilities of faculty and administrators, but because they are susceptible of abuse it is the responsibility of the faculty members and administration to exercise them with great care.

224. Punishment as to Specific Offenses. The Committee on the Judiciary and the Joint Committee of Faculty and Students will recommend to the Faculty Senate as necessary a schedule of offenses and appropriate maximum punishments. Amendments may be submitted at any time, but a comprehensive review of offenses and maximum punishments will be undertaken annually by these two bodies acting together and recommendations will be submitted to the Faculty Senate on the first day of December of each year.

224.1. Destruction or defacement of university property. Full restitution shall be made to the university. When damage results from joint action of students or of students and others, individual students who actively and substantially participated in the misconduct that caused the damage will be liable for the whole or a proportionate share of it as the court or hearing body decides, provided that the university may not recover more than its total damage. In addition to restitution, students may be penalized under section 223.4 on the

following basis: Minor damage, less than \$50. total (not pro rata) - (1), (2), (3), (4). Serious damage, more than \$50. but less than \$100. (not pro rata) - (1), (2), (3), (4), (6) or (8). Gross damage, more than \$100. (not pro rata) - (1), (2), (3), (4), (6), (7) or (8). To impose a penalty of (6), (7) or (8) the court or hearing body must find that the student was not merely negligent or careless, but that the student acted with a conscious intent to destroy or deface the property or that the student acted with clear indifference to or disregard for the damage that might result from his conduct.

224.2. Disruption of academic activities. If the court finds that a student acting alone, acting concurrently with others or in concert with others disrupts the normal academic activities of the university, he will be subject to the following penalties:

(a) Minor disturbances. Conduct that incidentally disturbs or disrupts some academic activity for a few minutes but which is not aimed at such activity and which does not seriously impair that activity or seriously invade the interests of those engaged in that activity. The following provisions of section 223.4 may be imposed: (1), (2) or (3).

(b) Major disturbances. Conduct that deliberately disturbs some academic activity or attempts to disturb the activity or which, though not aimed at the activity disturbed, is in violation of rules or regulations or is otherwise wrongful and is engaged in with a clear indifference to or disregard for the fact that academic activities may be disturbed. The following provisions of Section 223.4 may be imposed: (1), (2), (3), (4), (6), (7) or (8). The greater the consciousness of the offense, the greater the indifference to academic freedom and the functions of the university, the more serious the penalty should be.

224.3. Disruption of Administrative Activities. If the court finds that a student acting alone, acting concurrently with others or in concert with others disrupts the normal administrative activities of the university, he will be subject to the following penalties:

(a) Minor Disturbances. Defined analogously to Section 224.2 (a). The following provisions of Section 223.4 may be imposed: (1), (2), or (3).

(b) Major Disturbances. Defined analogously to Section 224.2 (b). The following provisions of Section 223.4 may be imposed: (1), (2), (3), (4), (5) or (6).

The greater the consciousness of the offense, the greater the indifference to the costs to the university and its community, the more serious the penalty should be. The court or hearing body should treat Sanction 223.4 (5) in this instance analogously to Section 224.1, recognizing that disruption of work and employees results in a real economic loss to the university community for which those wrongfully imposing such costs should pay.

224.4. Disruption of Non-academic Programs and Events. If the court finds that a student acting alone, acting concurrently with others or in concert with others disrupts non-academic programs or activities of or at the university, he will be subject to the following penalties:

a student with unpaid indebtedness to the university. Another example would be the refusal to reenroll a student of incapacitating psychological disturbances. Another example would be the requirement that a student pay for damage to university property caused by his negligence. These examples are illustrative, not a comprehensive description of these inherent administrative powers. These actions are not governed by the disciplinary procedures of the Statement on Student Rights or by the Judicial System.

223.8. Non-judicial Punishment. In the course of university administration, faculty and administrators may take actions that are punitive in character but which are not so serious as to justify referral to the judicial system. An example is the power of a member of the faculty to control conduct in his classroom. Another example is the withdrawal of privileges upon an administrative determination of misconduct, such as library privileges or the privilege of using the University Center for individuals or organizations that do not conform to the regulations of the Center. Actions of this kind are necessary to the reasonable operation of the university, but care must be exercised that they do not become devices for avoiding the safeguards established to avoid unfair, arbitrary or capricious invasions of student rights. Actions taken under such inherent power may give rise to complaints or appeals to the judicial system, the President, the Board of Trustees, or some appropriate Faculty Senate Committee, such as the Committee on Professional Ethics and Academic Freedom, when the student feels that the administrative punishment imposed upon him violated the protections afforded him under the Statement of Student Rights or under this Resolution. Whether the administrative punishment was proper or not will often depend not upon the sanction alone but upon a configuration of factors including the nature of the offense, the nature of the sanction, the situation in which the conduct occurred and in which the sanction was imposed. Sanctions that might be invoked without offending this Resolution or the Statement of Student Rights might include some form of each of the following listed under Section 223.4: (1), (2), (3), (4), and (5). Even (6) might be available to a professor in his responsibility for controlling the classroom. The powers of this section are broad and inherent in the offices and responsibilities of faculty and administrators, but because they are susceptible of abuse it is the responsibility of the faculty members and administration to exercise them with great care.

224. Punishment as to Specific Offenses. The Committee on the Judiciary and the Joint Committee of Faculty and Students will recommend to the Faculty Senate as necessary a schedule of offenses and appropriate maximum punishments. Amendments may be submitted at any time, but a comprehensive review of offenses and maximum punishments will be undertaken annually by these two bodies acting together and recommendations will be submitted to the Faculty Senate on the first day of December of each year.

224.1. Destruction or defacement of university property. Full restitution shall be made to the university. When damage results from joint action of students or of students and others, individual students who actively and substantially participated in the misconduct that caused the damage will be liable for the whole or a proportionate share of it as the court or hearing body decides, provided that the university may not recover more than its total damage. In addition to restitution, students may be penalized under section 223.4 on the

following basis: Minor damage, less than \$50. total (not pro rata) - (1), (2), (3), (4). Serious damage, more than \$50. but less than \$100. (not pro rata) - (1), (2), (3), (4), (6) or (8). Gross damage, more than \$100. (not pro rata) - (1), (2), (3), (4), (6), (7) or (8). To impose a penalty of (6), (7) or (8) the court or hearing body must find that the student was not merely negligent or careless, but that the student acted with a conscious intent to destroy or deface the property or that the student acted with clear indifference to or disregard for the damage that might result from his conduct.

224.2. Disruption of academic activities. If the court finds that a student acting alone, acting concurrently with others or in concert with others disrupts the normal academic activities of the university, he will be subject to the following penalties:

(a) Minor disturbances. Conduct that incidentally disturbs or disrupts some academic activity for a few minutes but which is not aimed at such activity and which does not seriously impair that activity or seriously invade the interests of those engaged in that activity. The following provisions of section 223.4 may be imposed: (1), (2) or (3).

(b) Major disturbances. Conduct that deliberately disturbs some academic activity or attempts to disturb the activity or which, though not aimed at the activity disturbed, is in violation of rules or regulations or is otherwise wrongful and is engaged in with a clear indifference to or disregard for the fact that academic activities may be disturbed. The following provisions of Section 223.4 may be imposed: (1), (2), (3), (4), (6), (7) or (8). The greater the consciousness of the offense, the greater the indifference to academic freedom and the functions of the university, the more serious the penalty should be.

224.3. Disruption of Administrative Activities. If the court finds that a student acting alone, acting concurrently with others or in concert with others disrupts the normal administrative activities of the university, he will be subject to the following penalties:

(a) Minor Disturbances. Defined analogously to Section 224.2 (a). The following provisions of Section 223.4 may be imposed: (1), (2), or (3).

(b) Major Disturbances. Defined analogously to Section 224.2 (b). The following provisions of Section 223.4 may be imposed: (1), (2), (3), (4), (5) or (6).

The greater the consciousness of the offense, the greater the indifference to the costs to the university and its community, the more serious the penalty should be. The court or hearing body should treat Sanction 223.4 (5) in this instance analogously to Section 224.1, recognizing that disruption of work and employees results in a real economic loss to the university community for which those wrongfully imposing such costs should pay.

224.4. Disruption of Non-academic Programs and Events. If the court finds that a student acting alone, acting concurrently with others or in concert with others disrupts non-academic programs or activities of or at the university, he will be subject to the following penalties:

(a) Minor Disturbances. Defined analogously to Section 224.2 (a).
The following provisions of Section 223.4 may be imposed: (1), (2), (3) or (4).

(b) Major Disturbances. Defined analogously to Section 224.2 (b).
The following provisions of Section 223.4 may be imposed: (1), (2), (3), (4), (5), or (6).

The greater the consciousness of the offense, the greater the indifference to the costs to the university or others, the more serious the penalty should be. Restitution may be a proper remedy for the university but these proceedings will not be used to make the defendant compensate others for their injury.

224.5. Physical harm to another. A student who physically injures another member of the university community or some person on campus, whether the injury is by design or incidental to conduct otherwise in violation of university rules, regulations or custom, may be punished by application of any of the sanctions provided in Section 223.4, the penalty to be proportionate to the degree of wrongful intent or reckless disregard of the interests of others.

224.6. When Punishment for an Offense Is Not Specified. Unless limited by a specific provision of this Resolution, or its amendments, a court or hearing body may impose the maximum punishment within its authority upon any offense over which it has jurisdiction.

224.7. Mitigation of an Offense. The court or hearing body will consider attempts by the defendant to mitigate the injury to others, including compensation of those injured by his conduct, in determining the appropriate penalty.

224.8. Chronic Misbehavior, Recalcitrance, Immaturity, Irresponsibility. The court may find that a student is so frequently in trouble, though the individual offenses are trivial, that the pattern of conduct represents a serious disciplinary problem. Similarly, in his response to the disciplinary proceeding a student may reveal an attitude so hostile to the university community or to any reasonable regulation that the student represents a serious disciplinary problem. Similarly, a student may conduct himself in a way that reveals such immaturity of personality or irresponsibility of character that he is or promises to become a serious disciplinary problem. In such a case the court must be careful that it does not let its anticipation of misconduct lead it to impose an inappropriately heavy or a harsh penalty. The court must be careful, too, that it does not permit a hostile or irresponsible attitude to influence its finding of factual guilt or innocence. Nevertheless, the court may find the pattern of behavior sufficiently serious that it wishes to recommend to the Office of Student Affairs that the student's record be reviewed to determine whether an administrative termination, Section 223.4(8), may not be in the best interest of the university. An administrative termination does not stigmatize the student or interfere with his admission to other universities. It is essentially an action taken to terminate the renewal of the enrollment contract of the student, and may be taken for a definite period or for an indefinite period as the individual case requires.

225. Jurisdiction as to Punishments and Other Sanctions. Unless otherwise specified in the charter of a court or hearing body or in this Resolution, courts and hearing bodies shall be limited to the following sanctions:
- 225.1. Special Courts. Special Courts may impose the following sanctions and such lesser particularized punishment or orders as they may see fit: Section 224.4(1), (2), (3), (4) and (5); Section 224.5(1) through (8).
- 225.2. The Student Court. The Student Court may impose the following sanctions and such lesser particularized punishment or orders as it may see fit: Section 224.4(1) through (6); Section 224.5(1) through (8).
- 225.3. Special Student-Faculty Hearing Committees. The Special Student-Faculty Hearing Committees may impose the following sanctions and such lesser particularized punishment or orders as they may see fit: Section 224.4(1) through (7); Section 224.5(1) through (8).
- 225.4. Student-Faculty Committee on Appeals. The Student-Faculty Committee on Appeals may impose the following sanctions and such lesser particularized punishment or orders as it may see fit: Section 224.4(1) through (7); Section 224.5(1) through (8).
- 225.5. Student-Faculty Committee on Academic Discipline. The Student-Faculty Committee on Academic Discipline may impose any punishment or requirement that might be imposed by the college or school delegating the case to it.
- 225.6. Office of the Vice President for Student Affairs. The Vice President for Student Affairs and hearing officers appointed by him may impose the following sanctions and such lesser particularized punishment or orders as he may see fit: Section 224.4(1) through (7); Section 224.5(1) through (8). Inherent in this office are informal sanctions and powers of non-judicial punishment, non-punitive administrative action and administrative authority derived from the President or from the Board of Control. This section does not limit such powers but applies to actions taken through the formal disciplinary processes contemplated by this Resolution.
- 225.7. Presidential Appeals Board. The Presidential Appeals Board may impose the following sanctions and such lesser particularized punishment or orders as it may see fit: Section 224.4(1) through (7); Section 224.5(1) through (8).
- 225.8. The Board of Trustees. The Board of Trustees may exercise any disciplinary power within the authority vested by the charter of the university and not specifically waived by contract, regulation or university policy.

Chapter 3. Functions, Duties, Responsibilities.

301. Committee on the Judicial System - Duties. The Committee on the Judicial System will work closely with the Executive Secretary to the Judicial System to make sure that the various hearing bodies are efficiently, fairly and expeditiously handling their business. The Committee will prepare and publish a set of appropriate general procedures as provided in Section 221 and will assist the individual courts in the preparation of such special rules as they require, as provided in Section 221.1. The Committee will prepare and submit to the Executive Committee of the Faculty Senate, to the President of the University, or to other appropriate bodies such reforms and amendments as are required by the system. The Committee will assist in the selection of personnel to staff the various courts. The Committee will work with the University Representative and with defense counsel to adapt procedures when special conditions so require. The Committee will report annually to the Faculty Senate on the work accomplished during the previous year by the system, on the strengths and weaknesses of the system, on needed reforms and on changes in the substantive rules and regulations governing students, faculty-student relations, organizational activities or problems among the students and any other non-judicial matters impinging significantly upon the judicial system.
302. Executive Secretary to the Judicial System - Duties. The Executive Secretary will provide and oversee the necessary clerical support for the judicial system. He will maintain dockets for the courts, assist defense counsel and defendants in the preparation of papers required by providing them with information on judicial procedures, serve and publish notices required, arrange for recording or transcription of hearings, publish announcements of meetings and trials, inform parties seeking to file complaints of procedures, counsel defendants of their options and rights, and work closely with the Committee on the Judicial System.
303. University Representative to the Judicial System - Duties. The University Representative will investigate all complaints filed with the Executive Secretary. In his discretion he will file formal complaints in the proper court or hearing body. He will have the power to issue informal warnings and reprimands to students, to seek non-punitive administrative actions or non-judicial punishment, and to seek judicial sanctions in the courts or hearing bodies. He will have authority to investigate complaints, to promise immunity against prosecution, to settle cases on behalf of the University, and such other authority and powers as reasonably inhere in his office or may be granted by the Committee on the Judicial System, the Faculty Senate or the Board of Trustees. The University Representative will prepare or oversee the preparation of all cases in the judicial system brought on behalf of the University. He will personally present all cases to the Student Court, to the Student-Faculty Committee on Appeals, to the Presidential Appeals Board, and to the Board of Trustees. He will coordinate the presentation of all cases to the Special Student-Faculty Hearing

Committees. He will prepare a draft opinion, order or report on behalf of the University for all cases he presents before the Student Court, as provided in Section 220.2. The University Representative will work closely with the President, the Faculty Senate, the various administrative officers of the University, appropriate committees, student organizations, and individual students and faculty as necessary to develop a fair and effective code of rules and regulations for campus life, a fair and effective judicial system, and an environment conducive to academic freedom.

304. Adviser for Defendants, Organizations and Intervenor - Duties. The adviser counsel for parties appearing before the courts and hearing bodies will familiarize himself with the provisions of this Resolution, with general procedural requirements and rules as issued by the Committee on the Judicial System, and with the local rules and procedures of the court or hearing body before he is appearing. He will present his case in an orderly and civil manner. He will be respectful of the court, of other counsel, of witnesses and of parties. He will obey the lawful instructions and orders of the court and will register his exceptions, disagreements, and objections in a manner that will facilitate the conduct of the proceedings. He will familiarize himself with the Statement on Student Rights adopted by the Board of Trustees. In cases before the Student Court or other bodies requiring draft opinions from the University Representative, defense adviser or the counsel to other parties may, at their option, submit draft opinions. Any court, at its option, may require the adviser to submit drafts of orders, rulings, opinions, etc.

305. Demeanor of Members, Counsel, Witnesses and Parties. A system of student courts and hearing bodies and of student-faculty hearing bodies can be effective only to the extent that the cooperation of all participants assures an orderly and fair development of testimony and arguments. All persons before the courts or hearing bodies and the members of such bodies themselves are expected to show respect and consideration to one another so that the fact finding and legal analyses may proceed in a reasoned and reliable way. The courts and hearing bodies have the power to warn disorderly or disruptive persons, to order them from the room, to close the hearing to the public, to reprimand or censure persons before the court and to adjourn the hearing until some later time or other place. The courts and hearing bodies have the affirmative duty to exercise such powers to protect the persons before them from embarrassment, harassment, abuse, or ad hominem attacks from counsel, parties, witnesses or other persons. Disorderly, abusive or disruptive conduct, or other acts of contempt, may result in disciplinary action against the offenders by the court or hearing body having appellate jurisdiction over the body in question. Such disciplinary procedures are necessary to protect the utility of student courts and hearing bodies and of administrative procedures generally as fair and reliable fact finding processes. Any member of the court or hearing body, counsel, party, witness or intervenor may ask the court to protect them against abuse or harassment and to assure them an orderly forum for the trial of

issues of fact and law. The primary responsibility for this protection lies with the presiding officer, but all members of the court have a duty to assert the power of the court to assure an orderly, fair proceeding. Failure of the court members, or of the members of any hearing body, to control the proceeding and to assure a fair trial will be grounds for removal. A complaint to the appellate body against specific persons or as an attack upon the validity of any action taken as a result of an improper, unreliable proceeding may be made by any party to the action injured by such action. If the court or hearing body cannot control a proceeding, it shall terminate the session by adjourning, shall confer among its members as to the possibilities of resuming at some later time with cooperation of counsel and parties, and, if such resumption seems futile, shall surrender jurisdiction to the body immediately above it in the appellate structure. Parties may ask the appellate body to relieve the court or hearing body and to try the case itself, as provided in section 218.

306. Presiding Officers of Courts, Committees, Boards and Other Hearing Bodies - Duties. It is the duty of each presiding officer to manage the mechanics of the trial or hearing; to coordinate schedules, paper work and reports with the Executive Secretary to the Judicial System; to speak for the body in all exchanges with counsel, parties or others except when the body is engaged in general interrogation or conference with counsel or others; to control the proceedings, maintain order, protect persons before the court, and instruct persons before the body on the appropriate procedures of the body; to declare the rulings and orders of the court; to assure the proper completion and filing of all papers; and other duties as defined by the Committee on the Judicial System or as inhere in his position as presiding officer. It is the special duty of the presiding officer to make sure that the developing testimony and evidence and the legal arguments of counsel are relevant and that the matters raised by the complaint, appeal, petition or other business before the body are fully and reasonably developed. The presiding officer has affirmative duties to develop the full case latent in the business before the judicial body. He may not sit passively and let the adversarial scheme lead the body to one side or the other through deficiencies of counsel when inquiries from the body itself will better determine the merit and truth, if any, of the matter.

307. Members of Courts, Committees, Boards and Other Hearing Bodies - Duties. It is the duty of each member of every judicial body to diligently attempt to develop the fullest and fairest case possible for every party or interest before the body. The members should not rely excessively upon the adviser but should actively attempt to satisfy their curiosity and interest so that they may decide all issues impartially, fairly and reliably. Members must frequently remind parties and adviser that the body is administrative in character and not a judicial body like a civil or criminal court. Confidence is placed in the character and judgement of the members and they should not lightly exclude any evidence or argument but should hear and examine as much as possible of relevance

306.1. Questioning by the Law Advisor. Where the Law Advisor feels that the presiding officer and members of the court have failed to reasonably or fully develop the case latent in the business before the court, the Law Advisor will ask such questions as he feels necessary or helpful to the court.

to the specific issues before the body. Members must not let themselves be intimidated by legal objections or rhetoric. Members should feel free to demand that counsel explain arguments, especially those couched in legal terminology, and should not hesitate to ask that they be explained again and again until counsel's meaning is clear. The members are the decision makers responsible for the outcome. Advisers are merely the servants of their clients and of the members of the body must not be allowed to overwhelm or intimidate their superiors in responsibility for the outcome of the trial or hearing. Members should be especially wary of highly abstract and political arguments, and of arguments based upon provisions of the U.S. Constitution that are not appropriate when applied to non-governmental actions. Members are reminded that the decisions on each question are their's individually. Members should feel free to disagree or dissent and to append concurring or dissenting opinions. Members have a duty to submit to the Committee on the Judicial System complaints, comments and suggestions for the improvement of the procedures or substantive regulations governing the university. Members are expected to commit themselves diligently and in good faith to the business of the court; to conduct themselves in a manner that will set an example for adviser, parties, spectators, and others; to assert the power of the court to protect any person before the court who is subjected to embarrassment, harassment, abuse or other discourtesies; and to disqualify themselves if necessary under the provisions of Section 113.

308. Charge to the Court. It is the duty of the presiding officer to read the following charge, or a substitute as provided by the Committee on the Judicial System:

Charge to the (insert here the name of the body) and All Persons
Appearing Before It.

1. Student disciplinary authority of the George Washington University is vested in the Board of Trustees and prior to such time as the Board of Trustees acts, in the faculty of the university by the charter of the university as enacted by the Congress of the United States.
2. By delegation from the faculty of the university, the (insert here the name of the body) is empowered to try cases of the following kinds:
(insert here jurisdictional statement as provided in the body's charter)
3. This hearing body is an informal adjudicative body following procedures of administrative law as adapted to its needs. The law of evidence does not apply here. Technical objections are discouraged. Within the limits set by the Statement of Student Rights and Responsibilities, this body may inquire broadly and informally into all relevant matters. It is the special duty of the presiding officer to make sure that the

developing testimony and evidence and the legal arguments of counsel are relevant and that the matters raised by the complaint, appeal, petition or other business before the body are fully and reasonably developed.

4. The cooperation of advisers and parties is sought to facilitate the proceeding. Advisers are advised that the members of this body may often interrupt testimony and arguments to make specific inquiries or to ask for repetition or clarification. The members will try not to disrupt the testimony or train of thought of counsel or witnesses, but the questions of members should be answered explicitly and immediately.
5. Advisers and parties are reminded that the obligations between individual students and the university are largely contractual in nature. The university is not an agency of the federal government and arguments directed toward Constitutional limitations upon governmental action are of very limited relevance here.
6. Objections and exceptions taken by advisers or parties to rulings of this body should be noted explicitly so that the presiding officer may record the specific objection made or exception taken.
7. Advisers and parties are reminded that the development of a full, fair and reliable record requires that witnesses, opposing counsel and parties, and all other persons before this court be treated with fairness, courtesy and respect. This body will not permit witnesses or anyone else to be abused. It will not permit unproductive speech making or irrelevant arguments or testimony. All parties and their counsel are therefore reminded to keep the specific nature of the business before this court in mind and to address their testimony and arguments to the issues at hand.

(The presiding officer then proceeds to introduce parties and counsel to the hearing body and to announce the names of the members of the hearing body.)

309. Functions of Appellate Bodies. Those bodies responsible for reviewing the proceedings of lower courts or bodies have four functions. First, it is the responsibility of the reviewing body to make certain that justice was done and that the action of the lower body was fair, reasonable and in accord with university policies. Second, it is the responsibility of the reviewing body to correct errors or misunderstandings of the lower body, with remands accompanied by specific instructions as to procedures or deficiencies as provided in Section 220.2, in a practical, efficient way. Third, it is the responsibility of the reviewing body to educate the lower body and all members of the judicial

system as to the requirements, limitations, and responsibilities of the system. This is normally accomplished through conferences with counsel on appeal, the opinion of the appellate body, specific instructions or comments upon remand, and direct communications with the presiding officers and members of the various bodies when specific comment or instructions will be helpful in improving the fairness and effectiveness of the judicial system. Fourth, it is the responsibility of the reviewing body to facilitate the development of sound and reasoned applications of university rules, regulations and common law through its constructions and interpretations. These will normally be embodied in the opinions of the appellate body. Lower courts and hearing bodies will be bound by the interpretations and constructions of rules, regulations, customary practice and contractual obligations of the university made by their appellate bodies. The appellate body will determine in cases appealed at its discretion whether substantial justice or the effectiveness of the judicial system requires review.

310. Judicial Administration. In addition to reports, orders and recommendations as to specific cases, the individual courts and hearing bodies will file such reports on case load, meetings, docket backlog, etc., as may be required by the Committee on the Judicial System. Such reports to be filed with the Executive Secretary of the Judicial System.

311. Use of Draft Opinions. The Student Court, and any other court or hearing body using draft orders, rulings, reports, opinions, etc., must exercise special care not to be unduly influenced or misled by oversight into a misstatement of its position by the draft opinions and other models. The requirement of draft opinions and other papers is provided to expedite the work of the hearing bodies and to facilitate the analysis of issues before the body.

312. Specification of Penalties Sought. The University Representative will indicate to the court or hearing body at the outset of each trial what penalty or order is sought. At the conclusion of the trial, the University Representative may modify the penalty or order sought. At any point in the trial process, the parties before the court may negotiate a settlement of the case and stipulate a penalty or order, which stipulation will be binding upon the court unless in the judgment of the court such penalty or order would result in substantial injustice to the parties before the court or to other interested parties. In determining the appropriate penalty or order, the court is not bound to choose between that requested by the University Representative and that requested by the defendant, but may vary and shape an appropriate penalty or order in its discretion.

Chapter 4. Regulations, Codes and Ordinances

401. University Wide Regulations, Codes and Ordinances. Conduct regulations of university wide application will be prepared with student participation in accordance with the Statement on Student Rights and published in a manner reasonably calculated to inform students of the limitations on their conduct. The obligation to make university wide regulations explicit does not relieve students of conduct reasonably implicit in the organization, regulations, functions or custom of the university or of institutions similarly organized and regulated.
402. Regulations Governing Special Programs, Facilities and Persons. The university may adopt such regulations as it chooses and by procedures of its choosing to govern special programs, facilities or persons of special status within the university. Such regulations shall be published in a manner reasonably calculated to inform those persons affected, but students enjoying a special relationship to the university or utilizing specialized facilities, such as the University Center, the library, and the gymnasium, must make a positive effort to inform themselves of such regulations.
403. General Authority of Officers and Agents. The promulgation of regulations governing student conduct does not bar or limit the reasonable promulgation of rules, instructions or commands inherent in the general authority of university officers, agents and employees. Such power may be exercised in the event of an emergency or under special circumstances reasonably requiring its exercise, including temporary actions pending review and reconsideration of standing rules and regulations, to impose limitations upon conduct or duties upon those using facilities, participating in programs or entering upon university property. Persons exercising such authority will provide such notice as is practicable to persons affected, including, when practicable, notice of the authority by which such action is taken and reasonably explicit notice of the conduct limited, barred or required. This inherent authority includes the power to order persons off property, out of facilities or to discontinue specific conduct. The remedy for students and others who feel that such authority is improperly exercised is to complain immediately to the Vice President for Student Affairs, who shall make a timely and reasonable investigation and take such action as is reasonably required. Students shall presume proper authority in officers, agents and employees and shall violate their orders and instructions at risk of disciplinary action.
404. Publication and Notice. The purpose of publication and notice requirements is to reasonably inform all persons subject to regulations of their substance. Regulations are not promulgated by the standards of criminal statutes and students may not engage in all conduct not explicitly and precisely forbidden. The purpose of publication and notice is to give reasonable notice of an area of conduct regulation and courts, hearing bodies and administrators will not excuse conduct reasonably prohibited by the regulation, rule or order on merely technical or unreasonably strict construction.

Chapter 5. Special Procedures, Emergencies and Non-Prejudicial Errors in Procedure.

501. Special Procedures. To facilitate the prompt adjudication of disciplinary cases in situations involving large numbers of students and whenever a significant backlog of untried cases develops for either the Student Court or the Student-Faculty Committee on Appeals, special hearing committees as necessary will be appointed by the President in accordance with the provisions of sections 204, and 204.1. These committees, to be known as Special Student-Faculty Hearing Committees, will consist of three students and three faculty members, the chairman to be one of the faculty members. The procedural protections of the Statement on Student Rights and Responsibilities will govern. Appellate procedures are as specified in sections 216.5 and 217.5.

502. Emergencies and Extraordinary Situations. The university recognizes the impossibility of anticipating every circumstance under which the disciplinary authority of the university must be exercised. The university also recognizes the possibility that compelling circumstances may require that certain procedures normally afforded students be suspended. After consulting as practicable with the Chairman of the Committee on the Judicial System, the Chairman of the Executive Committee of the Faculty Senate and the President of the Student Body (or, in his absence, the senior available student of the Joint Student-Faculty Committee on Student Affairs), the President may in his individual discretion suspend this resolution or parts of this resolution for a period not to exceed thirty calendar days. If the President exercises this power, he will do so in a letter to the Chairman of the Board of Trustees indicating in what particulars this resolution will not be followed, and such letter will be published to all members of the faculty and prominently displayed on the campus. The exercise of this power will automatically convene the Faculty Senate, which meeting will be set by the Executive Committee, but in no case for a date later than ten calendar days after the effective date of the suspension. The Faculty Senate may consider at that meeting any matters relative to the suspension of normal procedures, but it will consider explicitly the following questions:

- (1) Does the Faculty Senate advise the President to vary the terms of the suspension in any way?
- (2) Does the Faculty Senate propose any modifications of the procedures provided under the terms of suspension?
- (3) Does the Faculty Senate propose any modifications to the permanent disciplinary procedures of the university?

503. Non-Prejudicial Errors in Procedure. The university in adopting an adjudicatory scheme with extensive participation by students and faculty recognizes that imperfections in procedures and errors in rulings of trial bodies are inevitable. Appellate bodies reviewing appeals based on technical, procedural or interpretative errors will

act upon two principles: first, that the disciplinary format adopted by the university is administrative and not judicial in spirit and that considerable latitude of discretion must be permitted if excessive judicialization and legalisms are to be avoided; second, that only errors that significantly prejudice or may reasonably have prejudiced in a significant way the interests of a party are to be grounds for reversal or remand. Further, only the party so prejudiced may appeal such errors. Further, the provisions of this Resolution as to scope of review (Sections 220., 220.1, 220.2, 220.3 and 220.5) are to be applied in a manner calculated to achieve substantial justice and not to results forced by technicalities.

501.2. Faculty Senate Consultation with the Committee on the Judicial System and the Joint Student-Faculty Committee on Student Affairs. Prior to amendments to this Resolution, the Faculty Senate shall consult with the Committee on the Judicial System and the Joint Student-Faculty Committee on Student Affairs, its successor or equivalent.

Chapter 6. Reform, Changes, Amendments.

601. Responsibility for Reform and Amendments. It is a general duty of all persons associated with the student disciplinary system to advise the Committee on the Judiciary of modifications that should be considered to improve the fairness and effectiveness of the system.

601.1. Committee on the Judicial System - System Amendments. The Committee on the Judicial System will bear the primary responsibility for identifying, studying and proposing amendments to the judicial system. It will present such amendments in the form of draft resolutions to the Executive Committee of the Faculty Senate and to the President of the university. The Committee will specifically list in its annual report proposed modifications under study and modification proposals made to be not acted upon by the Faculty Senate. See Section 301.

601.2. Faculty Senate Consultation with the Committee on the Judicial System and the Joint Student-Faculty Committee on Student Affairs. Prior to amendments to this Resolution, the Faculty Senate shall consult with the Committee on the Judicial System and the Joint Student-Faculty Committee on Student Affairs, its successor or equivalent.

ALTERNATIVE 1

A RESOLUTION TO MODIFY THE UNIVERSITY JUDICIAL SYSTEM DEALING
WITH STUDENTS CHARGED WITH NON-ACADEMIC DISCIPLINARY OFFENSES (70/5)

Whereas, The Student Court is scheduled to expire at the end of the Fall Semester 1970-71; and

Whereas, The Faculty Senate believes it should be continued for an additional year, possibly in modified form suggested by the Ad Hoc Committee on the Judiciary; therefore

BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON UNIVERSITY:

1. The Student Court should be continued, in principle, until the end of the Fall Semester 1971-72.

2. The question of conditions of continuance is deferred for consideration at the December 11, 1970, meeting of the Faculty Senate.

Executive Committee of the Faculty Senate

November 6, 1970

Commentary on 70/5, Alternatives 2 and 3

I. Present Practice.

1. The present system is an all-student court of five members nominated by the President of the now-defunct Student Assembly and appointed by the President of the University. A student may elect that charges be heard by the office of the Vice President for Student Affairs. In either event both the student and the University may appeal to the Hearing Committee on Student Affairs and thereafter to the Board of Trustees. The Student Court was established and made effective May 9, 1969, for a trial period of one year because of the "present deliberations of the President's ad hoc Committee on the University Judicial System." (Senate Resolution 69/2) The Hearing Committee on Student Affairs was created by the President and approved by the Trustees to hear charges of violation of the Human Relations Act in 1968. It is composed of six students and six faculty members. The Board of Trustees has ultimate authority under the Charter. This is not hypothetical power; last summer suspensions in two academic dishonesty cases were reversed by the Trustees. Last spring the Senate requested that the University take responsibility of presenting the evidence in cases brought against students. The President thereafter hired a third-year law student to perform this task.

2. Experience with the Present Courts. (To the extent it can be reconstructed from somewhat fragmentary records)

a. Cases 1-16. Maury Hall, April 23, 1969. Charges were filed against sixteen students for unlawfully entering, seizing, and damage to the building and contents of the Sino-Soviet Institute. As the incident arose before the creation of the Student Court, it was heard by Vice President William P. Smith, Jr. Mr. John Cantini presented the case for the University. Mr. Michael Tigar, a young attorney with a national reputation in civil liberties defense work, represented most of the defendants. A number of technical questions were raised by Tigar, some of them resulting in dismissals of charges other than on the merits. The University apparently neglected to offer any evidence of damage as a result of the occupation. Seven students were expelled, two suspended for one year, and one reprimanded. The cases provided the first opportunity for the Hearing Committee to consider disciplinary matters. It reversed all expulsions and suspensions, substituting reprimands, stating that Smith should not have presided, the University had not proven damages, and no basis in the record appeared for differential penalties. (Note: Even in criminal cases it is not customary for the basis for the penalty to be stated in the record. Sentencing is less formal and more flexible than guilt-adjudication.)

b. Cases 17-22. Disruption of Columbian College Faculty Meeting, May 8, 1969. A group of students entered the meeting of the Columbian faculty in Monroe Hall and refused to leave when requested to do so. They subsequently left, only to return by another door and disrupt the meeting again. Charges were filed against six students. The Student Court ordered three reprimands, dismissed two cases for delay in trial, and one case was dropped by the University. At least one of the reprimands was appealed to the Hearing Committee, which reversed the conviction because of a delay in trial.

c. Rice Hall Occupation, May 8, 1969. About 100 students entered Rice Hall, demanding a dialogue with the President. A meeting, often obscene in its language on the part of the students ensued. They left about four hours later. No charges were filed.

d. Cases 23-25, Monroe Hall Occupation, May 18, 1969. Monroe was occupied by a large number of students. They were suspended by the Provost when they refused to leave. The suspension was subsequently revoked. Charges were filed against three students but subsequently dropped.

e. Case 26. Painting on a University Building Wall. The Student Court found the defendant not guilty.

f. Cases 27-28. Disruption outside and inside the Hall of Government, May 5, 1970. Two students were charged with leading a demonstration of about 250 students inside and outside of Government; bullhorns were utilized and "Right now, shut it down!" was the chant. This was the first (and only) case presented by the new student prosecutor. He failed to call most of the witnesses available to him or to appreciate the strengths and weaknesses of his contentions. The Student Court dismissed the charges at the close of the University case. The second case arose out of the same events and is yet to be tried.

g. Case 29. Disruption of a Chemistry Class, May 6, 1970. About 50 students entered a classroom where an examination was being given in chemistry, demanding a political dialogue and chanting and pounding on tables. The teaching assistant was unable to continue, responding with fright and tears. Only one student was identified. He admitted entering the class in anger that a chemistry examination would be required in view of the Cambodian intervention. He received a reprimand. The Hearing Committee affirmed this disposition.

h. Case 30. Painting on a University Sidewalk, May 26, 1970. The student was seen painting a political slogan on the sidewalk owned by the University. No effort was made to promptly remove it and rains ultimately washed it away. The Student Court convicted the defendant of damage to University property but imposed what it termed a suspended sentence. The Hearing Committee reversed on the basis that defacement did not constitute damage. (Note: Adjudication of this case cost of University more than \$400.00.)

The above summary does not include cases in which administrative hearing was elected by students.

II. Proposed Changes.

Alternative #3 proposes a return to administrative hearing of student misconduct. It is designed to be relatively simple, efficient, expeditious, uncomplicated, and inexpensive, while at the same time providing machinery for compliance with the due process provisions of the Statement on Student Rights and Responsibilities. The hearing official could actively and informally inquire into the facts of an alleged violation and thus be more likely to act administratively, rather than passively examine a record made by others, as is more commonly the case with judicial tribunals.

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Alternative 2 is a compromise between the present institutions and the administrative proposal. It would establish a combined court of two students, two faculty members, and one administrative officer. Appeal would be to the President, and a petition for review could thereafter be made to the Board of Trustees. Minor infractions, such as the sidewalk printing case, could be heard administratively. Skilled persons would be required for at least one position on the court and for prosecution.

III. Reasons for Change.

The present system simply does not provide a simple or efficient or accurate means of adjudicating disciplinary cases. A complex monster has been created, and at the same time amateur staffing. While fairness to students facing charges has been achieved, the University is virtually without protection from intimidation and disruption. Not only has it been forced to suspend functions, but it may conceivably be faced with costly refunds to students who felt they were denied the full educational experience for which they paid. Nor is use of civil authority (increasingly sought) an adequate substitute. Kent State vividly illustrates the tragedy which may ensue upon a too easy confrontation between students and armed force. Furthermore, reliance on the injunction makes empty the orders of college administrators. The grossly-clogged D. C. courts cannot efficiently handle any significant number of contempt charges. This is not to say that injunctions and police have no place, merely that they cannot substitute for viable internal processes.

Some of the difficulty which has been experienced may be traced in part to inadequate presentation of the University case. We have tried using administrators, professors, and students who lack training or experience in litigation. The result has been a predictable one. Litigation, although it may seem simple, is something which lawyers learn partly by training, but mostly by practice. Important matters are not given to the inexperienced, even though they be law school graduates. The confused type of situation which is typical in an academic disruption is the most difficult of all to present to a tribunal. The rights established in the Statement of Student Rights and Responsibilities present many vital questions of great complexity.

Trained and experienced prosecution is unlikely to be effective in a Student Court setting. The "we-they" attitudes of many of the students are likely to be exacerbated. One senses a significant student subculture which often does not share the interests of the faculty and many of the other students in maintenance of the University peace. Students who are active in student affairs are disproportionately likely to belong to this subculture and to be appointed to courts. The audiences at hearings have been dominated by radical students, and they contribute to the pressures on student courts. And I think the students are wise enough to know when they are asked to perform a disciplinary task on fellow-students which faculty and administration find too distasteful to handle themselves.

The result of the present system has been time-consuming, very expensive, very confused adjudication, with a high percentage of cases being dismissed for procedural difficulties bearing no relationship to the merits. A very large number of incidents striking at the heart of what a free university is supposed to stand for have occurred to be met with helpless response.

I have tried to examine the disciplinary procedures at six other universities. I could not find material for Harvard. Yale power to discipline resides with the dean and faculty of the college in which the student is enrolled. M.I.T. uses a student group for minor infractions while serious ones go to a group of eight faculty, five students, and one administrator. Cornell uses equally balanced student-faculty boards initially, preserving faculty power to overrule the boards on its own motion. Georgetown uses students for minor matters and faculty for major ones. The University of Chicago uses five faculty plus two students for trial, two administrators plus one student for appeals.

Respectfully submitted,

David Robinson

David Robinson, Jr.
Professor of Law and
Member of the Senate

November 6, 1970

ALTERNATIVE 2

A RESOLUTION TO MODIFY THE UNIVERSITY JUDICIAL SYSTEM DEALING WITH STUDENTS CHARGED WITH NON-ACADEMIC DISCIPLINARY OFFENSES (70/5)

WHEREAS, the University is a community composed of students, faculty, and administrative personnel, all of whom have a legitimate claim to representation on tribunals concerned with student breaches of the peace, and

WHEREAS, in the words of the University Charter, "The Faculty...shall have the power of enforcing the rules and regulations adopted by the trustees for the government of the [students] ...until a quorum of the trustees can be had," and

WHEREAS, the spirit of the Charter suggests that this responsibility be accepted rather than largely imposed on or delegated to members of the student body, therefore

BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON UNIVERSITY:

1. Effective with the end of the Fall Semester 1970-71 the Faculty Senate on behalf of the faculty delegates the initial adjudication of charges that students thereafter have violated rules of the University protecting teaching, research, learning, administration, and University persons and property from disruption, obstruction, injury, damage, or defacement to a Joint Hearing Committee, hereinafter called "the Committee" to be composed as follows:

a. Two students and two alternates nominated by the head of the student government and appointed by the President of the University. If there is no head of student government, two students appointed by the President of the University.

b. Two faculty members and two alternates appointed by the Faculty Senate from persons holding continuous tenure, at least one of whom is trained in an adjudicatory process. The Committee shall choose one of its members to rule on procedural matters occurring during the course of the hearings and deliberation, provided that such rulings may be overturned by a majority of the Committee.

c. One administrative officer and one alternate appointed by the President of the University.

2. A majority of the Committee shall constitute a quorum. Decision shall be by majority of those present and voting. Alternates may participate in the absence of regular members of the Committee.

3. The decision of the Committee to discipline or not to discipline a student will not operate to insulate the student from proceedings by the University or individuals or governments for injury to persons, damage to property, or violation of criminal law.

4. An accused student shall be given the option of having the charges against him heard either by the Committee or by the Vice President for Student Affairs, and if the accused student fails within a reasonable time before the charges are to be heard to announce his choice under this option, the charges shall be heard by the Vice President for Student Affairs.

5. The Vice President for Student Affairs may elect to assume jurisdiction in lieu of the Committee over cases of minor infraction where the penalty should not, in his judgment, appropriately include suspension or expulsion from the University. Where the Vice President for Student Affairs so elects, such cases shall be heard by him and suspension or expulsion may not be imposed.

6. Both the University and the student may appeal a final decision of the Committee or the Vice President for Student Affairs only to the President of the University, who shall decide such appeal personally, and thereafter both may petition the Board of Trustees for review.

7. The President of the University shall appoint a person trained and experienced in the presentation of evidence to an adjudicatory process to present the evidence on behalf of the University at all hearings, and appear on behalf of the University in any appeals, except that such person will not be required to appear in cases of minor infractions as defined in paragraph 5, supra.

8. Existing institutions and procedures are continued for disposition of charges of student misconduct occurring prior to the effective date of this Resolution.

9. This Resolution will expire on June 30, 1972, unless it is sooner repealed, amended, or extended.

Executive Committee of the Faculty Senate

November 6, 1970

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A RESOLUTION TO MODIFY THE UNIVERSITY JUDICIAL SYSTEM DEALING WITH STUDENTS CHARGED WITH NON-ACADEMIC DISCIPLINARY OFFENSES (70/5)

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8. Existing institutions and procedures are continued for disposition of charges of student misconduct occurring prior to the effective date of this Resolution.

9. This Resolution will expire on June 30, 1972, unless it is sooner repealed, amended, or extended.

Executive Committee of the Faculty Senate

November 6, 1970

ALTERNATIVE 3

A RESOLUTION TO MODIFY THE UNIVERSITY JUDICIAL SYSTEM DEALING WITH
STUDENTS CHARGED WITH NON-ACADEMIC DISCIPLINARY OFFENSES (70/5)

Whereas, The Student Court is scheduled to expire at the end of the Fall Semester of 1970-71; and

Whereas, The Student Court and Hearing Committee have had a trial period of approximately eighteen months and have been found unsatisfactory in achieving fair, accurate, expeditious and inexpensive adjudications of non-academic student disciplinary matters; therefore

BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON UNIVERSITY:

1. Existing institutions and procedures are continued for disposition of charges of student misconduct occurring before the end of the Fall Semester 1970-71.

2. The Student Court is abolished as to all disciplinary cases which may arise on the basis of charges of student misconduct occurring after the end of the Fall Semester 1970-71.

3. The charges of non-academic student misconduct shall be heard and determined by the Vice President for Student Affairs. Both the University and the student may appeal a final decision of the Vice President for Student Affairs only to the President of the University, who shall decide such appeal personally, and thereafter both may petition the Board of Trustees for review.

Executive Committee of the Faculty Senate

November 6, 1970